CANADIAN FEDERAL-PROVINCIAL TASK FORCE ON

JUSTICE
FOR
VICTIMS
OF CRIME

REPORT

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Available in Canada through

Authorized Bookstore Agents
and other bookstores

or by mail from

Canadian Government Publishing Centre
Supply and Services Canada
Ottawa, Canada K1A 0S9

Catalogue No. JS 42-15/1983E
ISBN 0-660-11413-5

Canada: $10.00
Other countries: $12.00

Price subject to change without notice

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LETTER OF TRANSMITTAL

Ontario

Provincial
Secretariat for
Justice

Whitney Block
Queen's Park
Toronto Ontario
M7A 1A2

June 2, 1983

Mr. Roger Tasse
Deputy Minister of Justice
Department of Justice
3rd Floor, Justice Building
Kent and Wellington Streets
Ottawa, Ontario
K1A 0H8.

Dear Roger:

At their meeting on December 7, 1981, the Federal/Provincial Ministers responsible for Criminal Justice established a Task Force of officials to examine the current needs of victims, their experiences with the criminal justice system, the funding implications of different courses of action, and ways and means of developing, sharing, and disseminating information on those issues both with the public and with criminal justice agencies.

I have the pleasure of attaching the Report of that Task Force.

In developing the Report we have had the benefit of examining the Reports of similar Task Forces from other jurisdictions, and some of our members have consulted with officials from those jurisdictions; we have reviewed the extensive literature on the issue; we have received written briefs from voluntary agencies and we have studied the results of the Canadian Urban Victimization Survey conducted in 1982 and other related research. We met on several occasions to discuss the wealth of material available and to share our knowledge and experience. Each meeting served to confirm our original suspicion that the topic is much more complex than some would believe.

There is an infinite variety of victims: the victims of corporate and white collar crime, racially motivated crime, private justice, false arrest and prosecution, police abuse and so on may all be affected in different ways. In view of the time at our disposal we have not commented, or only made passing comment, upon them and have confined our examination to the study of the victims of 'traditional crimes'.

It is our belief that if the recommendations we have made in regard to the victims of 'traditional crimes' are implemented there will be benefits to all victims.

We have attempted to indicate ways in which victims of crime can be treated justly and humanely, while at the same time protecting the rights of the offender and the needs of the state. It is our belief that our criminal justice system can and should express more concern for, show greater consideration to, and ensure better care of those who are victims.

There is no panacea because in the end lasting improvements will depend upon changes in attitudes. These can be fostered through strengthening certain services to victims and through enhancing the victim's role in the criminal justice process. It will take time, however, before these measures rebuild the confidence in and respect for the system which we believe latterly to have been eroded.

In response to your request we have written this document in a manner that we believe can be easily understood by the layperson.

In submitting the Report I wish to thank you for your advice, support and encouragement. May I also express my most sincere appreciation of the members of the Task Force who worked tirelessly and with dedication while carrying their normal workload and my gratitude to the jurisdictions they represented for allowing and supporting their participation. I am especially grateful to Ruth Pitman, Catherine Kane and Yvon Dandurand for their considerable assistance in the final drafting and editing of the Report.

Sincerely,

Don Sinclair

D. Sinclair
Chairman
Federal/Provincial Task Force on
Justice for Victims of Crime.

MANDATE OF THE TASK FORCE

ORIGINS, MANDATE AND PARTICIPANTS

Concern for victims of crime has recently been an important focus of attention for criminal justice agencies, as well as for private sector groups in Canada. The theme of improved assistance for victims of crime was stressed by a number of Ministers at the October 1979 Conference of Ministers responsible for criminal justice. In June, 1981, Deputy Ministers responsible for criminal justice requested the preparation of a report on Justice for Victims of Crime for the consideration of the Ministers. The report was prepared by an ad hoc federal/provincial working group chaired by the Deputy Provincial Secretary for Justice, Ontario.

The recommendations of the federal/provincial report were adopted at the meeting of Ministers responsible for justice, December 1981. This included establishing a federal/provincial task force to prepare a report for Ministers which would:

- examine in depth the current needs of victims and their experiences with the criminal justice system;
- explore such issues as long-term funding implications, appropriate legislative options, co-ordinating mechanisms, imaginative funding alternatives such as fine surtax options, community involvement and other topics which may be considered important to the development of effective services to victims, and make appropriate recommendations to Ministers;
- recommend to Ministers how best to communicate and sensitize the public and criminal justice agencies as to the needs and concerns of victims;
- recommend ways by which the two levels of government can ensure the efficient sharing of information and expertise in this area.

COMPOSITION OF THE TASK FORCE

THE TASK FORCE WAS COMPOSED OF THE FOLLOWING MEMBERS:

Don Sinclair Chairman	Visiting Professor, University of Toronto, Ontario
Robert Adamson	Ministry of the Attorney General, British Columbia
James Blacklock	Ministry of the Attorney General, Ontario
Richard Chaloner	Ministry of the Attorney General, Ontario
Yvon Dandurand	Department of Justice, Canada (from December, 1982)
Arthur Daniels	Ministry of Community and Social Services, Ontario
Bonnie Foster	Ministry of Correctional Services, Ontario
Gil Goodman	Department of the Attorney General, Manitoba
Serge Kujawa	Department of the Attorney General, Saskatchewan
Shaun MacGrath	Ontario Police Commission
Christopher Nuttall	Ministry of the Solicitor General, Canada
Padraig O'Donoghue	Yukon Department of Justice
Gerard Phillips	Department of Justice and Public Services, Northwest Territories
Daniel Prefontaine	Department of Justice, Canada
Yaroslaw Roslak	Department of the Attorney General, Alberta
Michel Vallee	Ministry of the Solicitor General, Canada
Robert Wilson	Department of Justice, Canada (until December, 1982)
Ruth Pitman (Secretary)	Provincial Secretariat for Justice, Ontario

We wish to thank each of the following who acted as a resource to the Committee and attended certain meetings of the Task Force:

Brian Booth	Department of Justice, Yukon
Pauline Dodds	Canadian Centre for Justice Statistics, Canada
Tanner Elton	Ministry of the Solicitor General, Canada
David Farrell	Department of Justice, Canada
Alex Himelfarb	Ministry of the Solicitor General, Canada
Catherine Kane	Department of Justice, Canada
Don Irwin	Department of the Solicitor General, Alberta
Susan Lee	Ministry of the Solicitor General, Canada
Linda Light	Ministry of the Attorney General, British Columbia
Linda McLeod	Ministry of the Solicitor General, Canada
Glen Rivard	Department of Justice, Canada (until December, 1982)
S. A. Thorvaldson	Ministry of the Attorney General, British Columbia

PART I

THE ISSUES: AN OVERVIEW

ISSUES - OVERVIEW

The victim and the victim's place in the criminal justice system have been the focus of increasing attention in several countries over the past twenty years. In some jurisdictions this interest has resulted in significant changes or additions being made to legislation. Starting with New Zealand in 1964, many countries have established various forms of state compensation to victims of crime. Some jurisdictions have delineated certain rights for victims of crime and encompassed these in legislation; some have enacted statutes which ensure that wherever possible restitution shall be made to the victim; others have passed legislation which legitimizes the victim's interest as an active participant in the criminal justice process.

Sometimes changes in administrative methods or in operational programmes have accompanied changes in legislation, or have occurred where the latter were seen to be unnecessary or untimely. Services have been developed to meet what are considered to be the legitimate needs of victims, particularly in the case of those perceived to be the most vulnerable such as women and young children.

France, South Australia and the U.S.A. are examples of jurisdictions which have passed legislation to establish services and procedures aimed at enhancing the role of the victim in the process. It is not surprising that Canadian citizens are more aware of the various thrusts made at the federal and state level in the U.S.A. than they are of developments elsewhere. In a sense this is unfortunate because the difference between the Canadian situation and that of the U.S.A. is more marked than the difference between Canada and the other examples chosen.

There is a vital and growing victims' movement in the U.S.A., whereas in Canada such a development is in an embryonic stage. It should be understood, however, that the victim in the United States faces problems of a different magnitude. The difference is not so much due to the difference in the two systems of justice, but rather to a different philosophy on state intervention. To take only three examples, albeit very important ones, in the U.S.A. there is only a limited degree of control of firearms and much more violent crime; there is no health service comparable to that in Canada and, therefore, the cost to the victim for crimes of violence can be much greater; finally, while most States have victim compensation funds, many have unstable funding or the legislation is not supported by an appropriation of funds to ensure its implementation.

The Task Force found the 1982 Omnibus Victim Protection legislation in the United States and the 1983 Report of the President's Task Force on Victims of Crime to be informative; however, the approach of, and the concepts outlined in, the reports of South Australia and France were of greater relevance. While the nature of the judicial systems, the extent of criminality, the form of criminal behaviour, and the measures proposed to alleviate the problems differ in each country, the commonality of concern expressed, i.e., that more attention should be given to the victim of crime, is of far greater significance.

Increasing concern for the victim has arisen partly from humanitarian reasons such as having regard for the victim's loss or suffering, partly because it would seem to be only just or equitable that the state owes an obligation to the victim beyond that owed to citizens in general, and partly because the success of any criminal justice system is dependent upon the co-operation of victims and witnesses of crime. It should be a matter of grave concern that research and victimization surveys indicate that some victims are reluctant to report certain crimes and witnesses are often reluctant to co-operate with the agents of the system in their attempts to apprehend and prosecute the offender.

One of the reasons for this is that the victims themselves felt that the incident was too minor to report. In addition, however, research reveals an undercurrent of disillusionment. Indeed, many victims appear to feel that the system would only fail them or ignore them if they invoked it. These feelings may have resulted from a previous unsatisfactory experience with the system or from lack of information as to what it can and cannot be expected to accomplish.

The sense of disillusion takes many forms. If people no longer feel confident in the ability of society's institutions to protect them, then they look to their own protection. It is not by chance that private security forces have expanded remarkably in the past ten years, that the burglar alarm business is a growth industry or that self-defence classes flourish. Nor is it by chance that we have witnessed an emergence of groups who believe either that the law is not functioning or is not functioning as they want it to, and who attempt to provide their own response to what they perceive to be an absence of law and order; a growth in the number of commercial enterprises which deal privately with the fraudulent activities of their employees rather than report them; a number of witnesses who do not come forward because they know they will not be compensated adequately for the loss of wages incurred by adjournments and delays.

When society fails to protect its members from criminal activity, they may suffer physically, emotionally, or financially. These are the costs of victimization - but are not the only costs. Others are incurred by the manner in which our system of justice operates, and arise from the discomfort, the inconvenience, and sometimes - it must be said - the discourtesy and humiliation the victim faces as the process unfolds. Even though the very survival of the system rests upon the willing co-operation of victims to report crimes and of witnesses to testify, the manner in which they are dealt with often does little to inspire or encourage that co-operation. The victim is often given little assistance to overcome the effects of his victimization and provided with little, if any, information about the progress of the case; he may receive little or no compensation for his losses and it is unlikely that he will be consulted with regard to any decisions which are made. It is often the case that the victim is twice victimized: once by the offence and once more by the process.

It is understandable that victims contrast their neglect with the attention given to offenders. Their rights are made known to them, different agencies are prepared to assist them to obtain bail; the case against them must be disclosed to their legal representatives but the latter are under no similar obligation to make any disclosure to the prosecutor; probation officers, correctional workers and parole officers are prepared to give offenders all the assistance they can; alternatives to incarceration such as community resource centres, and measures such as temporary absence, day passes, etc., which are designed to reduce the negative effects of incarceration all work to the offenders' benefit.

While some generally view the sentences currently imposed by courts as being inadequate to properly protect society and the victims, others view any form of incarceration as being counter-productive. The Task Force believes that in appropriate cases there are many alternatives which are now available to the court to increase the offenders' chances of rehabilitation and decrease the damaging effects of prison life. In focussing more concern on the plight of the victim one must not lose sight of the need to safeguard the accused. The interests of the criminal justice system can only be served in securing criminal justice, not in seeking revenge. Consequently, it is with misgiving that we view legislation enacted or proposed in foreign jurisdictions which would appear to have that intention.

Focussing concern solely upon offenders can be a disservice to victims in many ways. For example, restitution as a sentence has been justified on the basis that it contributes to the rehabilitation of the offender. Rarely is it considered in light of its benefit to the victim. Bearing in mind that wherever possible victims should be restored to the position they enjoyed prior to the victimization, then restitution becomes a very important component of a sentence. The Report indicates that we believe restitution should be considered in all appropriate cases. Although this will present some difficulties, we believe that these will be outweighed by the benefits.

It is commonplace today to hear that the victim is the 'forgotten' actor in the criminal justice system. The Task Force does not believe that victims are forgotten - or even, as some would have it, ignored - but we do believe that victims have been neglected. We do not find it difficult to understand how easily this can occur within a system where it is the responsibility of the state, not the victim, to identify, prosecute and punish the offender; where the principal parties involved are the offender and the state - each being represented by others who speak for them - and where the victim's involvement is almost entirely limited to that of giving testimony. Ours is an adversarial system where the victim is not one of the adversaries.

This report does not take issue with the fact that the criminal justice system, which is designed to deal with public wrongs, must primarily focus on the public interest. It does express the view, however, that in doing so the criminal justice system has relegated the victim to a very minor role and left victims with the conviction that they are being used only as a means by which to punish the offender. It is not surprising that victims believe that their losses and needs or any change in their lifestyle resulting from the offence count for little, in light of the Crown's focus on the public interest and the focus of the offenders' representatives on the interests of their clients.

In their first experience with the process of criminal justice many victims are bewildered and confused. They find it difficult to understand why their stolen property cannot be returned to them promptly when it has been recovered; why they are not informed of the existence of a Criminal Injuries Compensation Board; why they are not informed well in advance of court hearings; why a case was delayed, then adjourned and again adjourned - and again; why a charge was reduced; why the true impact of the crime upon them and their family was not brought to light during the hearing; why the case was remanded for sentence and they were not informed of the date; why the offender was not ordered to make restitution. In many instances it is, unfortunately, the case that very few services are provided to victims and they receive little information about the process.

This somewhat depressing description of the bewilderment of the victim is far from uncommon. There are, however, encouraging signs provided by pilot projects. Some who work within the justice field recognize the extent to which the system itself can add to the victim's problems and are taking action to change it. Police, prosecutors, judges, and administrators in certain areas have encouraged the development of victim support services, often with the co-operation of voluntary agencies, and have vastly improved the flow of information from the system to the victim.

Examples are given in the Report of initiatives designed to provide support and information services which in our opinion will encourage the victims to believe that in fact the system can work for them, and can greatly minimize the effects of their double victimization. There are many other worthwhile projects in Canada which exemplify how much more can be done.

If adequate support services were provided and if every effort were made to keep the victim informed of the various steps taken or decisions made, one could take the view that the system had fulfilled its obligation to the victim; but services of this kind do not affect the extent to which the victim is involved in the process. If victims feel that they are ignored then their claims to participate more fully in the process should be examined.

Although it may appear to be sensible, appropriate and just to encourage the participation of the victim in the process, to achieve this in the context of our present system poses some problems. It has been argued that to do so would cause further delay in the courts, would increase the cost burden on the system, would result in more severe punishments for the offenders, would compromise the procedural safeguards which have been established to ensure civil rights of the offender, and so on.

It is the contention of this Report that the arguments advanced against any change in this regard are by no means convincing. Nor, can it be said, have other jurisdictions been persuaded by them. In France, in the U.S.A., and in Australia, we find examples of recent legislation which give the victim an expanded role in the criminal justice system. In our opinion the question to be addressed is no longer whether the victim should participate in the process or not. The question is rather the extent of this participation.

Few would quarrel with the decision, which has been reached in countries which have addressed the issue, that victims be provided the opportunity to inform the court of the impact of the crime upon them. Nor would many disagree that the Court should be required to give thought to the victim's concerns in the determination of a sentence since, in fact, attorneys and judges often take into consideration the effect upon the victim before arriving at a sentencing decision.

More disagreement is apparent, however, when the method of the victim's participation is considered at the time of sentencing and when victim participation is considered at other stages of the criminal process, e.g., at the determination of the charge, at bail hearings and at the time of parole decisions. We believe that the victim should most certainly be informed of these various decisions. We do not believe that the victim should be, or need be, involved at each of the critical points in the process. To take one example, it may seem appropriate that the victim should have some input into a decision regarding parole. However, if one takes the case of an offender who is sentenced to 10 years imprisonment and whose parole hearing occurs some four years after the offence was committed, certain questions must be addressed. Would the offender feel that he has paid his debt and that any input from the victim would be irrelevant? How long does one remain a victim?

Closely related to the issue of participation is the question of victims' rights. A number of foreign jurisdictions have delineated certain rights and enshrined them in legislation; however, some of these rights are very general in nature such as the right to be treated with dignity and sensitivity. Moreover, no effective remedies are available when these rights are abused. We believe that wherever possible specific rights which could properly be prescribed by the criminal law should be legislated. Guidelines should be issued for more general 'rights' by the Ministers responsible for law enforcement and court administration in order to establish policies and procedures ensuring that victims are treated with consideration.

The Report outlines the social, economic, legal and constitutional background to issues relating to victims and the present relationship between the state, the offender and the victim. It explores both the varied and the common needs of victims and indicates the range of services which could be established to meet those needs. It addresses the question of the role of victims, their rights, and the extent to which the offender should make restitution to the victim and/or the extent to which compensation to the victim should be provided by the state. It addresses, too, the issue of costs and funding.

The cost of providing additional services to victims is of particular concern in a time when the various jurisdictions within Canada are beset by financial constraints. The Task Force, while accepting that this issue must be addressed, recognized that any attempt to forecast the costs and benefits of its recommendations would be imprecise. We have, however, drawn upon the experience of others in this area and found that costs need not be excessive, and that the benefits could justify the costs entailed.

The search for sources of funding has led some jurisdictions to develop creative and imaginative ways of providing the essential resources to fund both services and compensation. Increasing use in particular is being made in U.S. jurisdictions of what has come to be known as a 'fine surtax'. This and other forms of funding have been examined.

The Report is divided into four Parts of which this Overview is Part I.

Part II deals with how the Task Force defines victims for the purposes of this Report,describes their needs, the legislation directly pertaining to them, and outlines the programmes which presently exist to serve them. In the course of this description it will be evident that there are gaps in services and improvements that can be made.

Part III focuses on recommendations for improving the situation of victims, and includes a discussion of some of the problems involved in funding and implementing those initiatives.

Part IV presents our Conclusion and Recommendations.

PART II

THE SITUATION OF THE VICTIM OF CRIME

CHAPTER 1:

WHO IS THE VICTIM ?

WHO IS THE VICTIM

The first part of this report focuses primarily on the current situation of victims of crime, and attempts to specify what is being done for victims in Canada and what remains to be accomplished. A logical first step in this process is the formulation of a more precise and limited definition of the concept of 'victims of crime'.

FOCUS OF THE TASK FORCE

The notion of victims of crime is a broad one, and no report can hope to encompass all the knowledge and information on all the victims of every different type of criminal activity. As a result, the Task Force has concentrated on a study and analysis of victims of 'traditional crimes'. This concept has three advantages:

1. It limits the discussion to crimes where there is a direct and identifiable victim. This includes such crimes as sexual assault, robbery, break-and-enter or theft, and covers most of the types of activity which threaten the most vulnerable groups of victims of crime (e.g., children, women and the elderly). However, it excludes many forms of corporate or white-collar crime, largely because it is difficult to isolate a specific victim or to establish the exact loss in such cases.

2. It limits the discussion to crimes where there is a direct and potentially identifiable perpetrator. This includes all forms of interpersonal victimization, but leaves aside those criminal activities where the moral and legal issues of assessing responsibility and guilt are difficult to resolve, e.g., crimes against the environment.

3. It limits the discussion to only those forms of criminal victimization for which some information is available. While this information is limited, it helps to establish what happens to victims of crime both as a result of the activity itself, and as a result of their experience with the criminal justice system. This is not to imply that other forms of crime are less harmful, or are less worthy of concern. It merely recognizes that not enough knowledge is at hand to identify the precise actual victims of corporate pollution, illegal mergers or payoffs, or of the sale of dangerous goods, or to establish the exact nature and amount of the loss they suffer.

The focus on traditional crimes includes most of what the public considers to be serious crime, and encompasses most of the situations where a victim of crime would have some contact with representatives of the criminal justice system. However, it does result in an exclusion from consideration of a number of serious issues. Reference has already been made to the fact that most corporate and white-collar crimes will be left aside for the present, largely because not enough is known about the victims of such crimes to allow us to deal with this issue appropriately. In addition, little attention will be paid to the emerging trends towards an emphasis on crime reduction and on increase in the use of different forms of private justice and security measures.

Private justice includes the actions and institutions that victims themselves set up outside of the publicly controlled criminal justice system to deal with their problems. Thus, for example, large corporations often have systems set up (with the co-operation of the unions) to minimize their losses as victims. In other words, rather than turning to the criminal justice system for help, there appears to be a tendency for organizations to handle the problems 'in house'. For example, there appear to be instances where banks which are victimized do not involve the public criminal justice system until other private means of resolution (usually involving restitution) fail. Such private systems of compensating victims have come under scrutiny only when they interact in some way with the public system and this tends to occur, it seems, only when such strategies fail in some way to fulfill their objectives. Unfortunately, we do not know enough about such systems to determine what relevance they might have for individual victims.

Individual victims themselves, however, do not rely completely on the publicly controlled agencies to deal with their problems. Recent concern in some cities in Canada about vigilante-style groups have raised our awareness of another area where hard data are lacking. These important gaps in our knowledge about self-help strategies indicate the necessity for further investigation of these issues if a full understanding of the situation and needs of victims in our society is to be obtained. The Task Force has not had sufficient time or resources to address these issues in detail. It is recommended that they be regarded as priorities for further enquiry.

DESCRIBING THE VICTIMS OF CRIME

A great deal more is known about the perpetrators of crime than about the victims of their activity. Official crime statistics give virtually no information on the victims of crime nor on the incidence of crimes not reported to the police. Thus, at least until recently, little could be said about which Canadians were more likely to be victimized by crime, or even about how many people were actually victimized.

Over the past year, a Canadian Urban Victimization Survey was conducted in seven major centres: Greater Vancouver, Edmonton, Winnipeg, Toronto, Montreal, Halifax-Dartmouth, and St. John's. This survey, based on a random sample of over 60 000 Canadians, provides us with extensive information concerning the extent of reported and non-reported crime in Canada during 1981, the impact of criminal victimization, public perceptions of crime and the criminal justice system, and victims' perceptions of their experiences.

For the year 1981, the survey estimates that for the seven cities there were more than 700 000 personal victimizations (sexual assault, robbery, assault, and theft of personal property), and almost 900 000 household victimizations (break-and-enter, motor vehicle theft, household theft and vandalism). Since fewer than 42% of these incidents were reported to the police, clearly many more Canadians were victimized than official crime statistics would indicate.

The Risk of Victimization

When crimes are divided into two general categories of personal offences and household offences it is possible to calculate rates per thousand adult population or per thousand households. The survey found that about 70 incidents of personal theft per thousand population occurred in the seven cities studied, and that the more serious the type of crime, the less likely it is to occur. Sex differences are considerable for each category. Not surprisingly, women are seven times more likely than men to be victims of sexual assault, but they are also more likely than men to be victims of personal theft. Men are almost twice as likely as women to be victims of robbery or assault.

Risk of victimization is closely tied to age. Contrary to popular belief, however, elderly people are relatively unlikely to be victimized by crime. Those under 25 had the highest rate of victimization in all categories of personal offences, and these high rates declined rapidly with increasing age after this point.

The relationship between income and victimization is more complex. The survey found that the higher the family income of urban residents, the more likely they will experience some form of household victimization or personal theft.

Although professionals working in this field have long held the belief that break-and-enter offences occur more frequently among low-income households, this is not so clearly the case in the seven urban centres studied. From these findings, families with incomes under $9 000 per year or between $20 000 and 29 000 had lower break-and-entry rates than households with incomes between $10 000 and $19 000. The highest break-and-entry rates were for households with incomes over $40 000.

These complex relationships between income and risk may reflect changing demographic trends within our cities. The residential redevelopment of inner city areas may bring those with high and low incomes into closer proximity than has been the case since the first development of dormitory suburbs and communities, and this mix of income groups may well mean a wider distribution of risk across income groups.

Lifestyle is also an important component of overall risk of victimization. One measure of lifestyle which is strongly related to risk is the number of evenings spent outside the home each month. For example, there is a strong positive relationship between the number of nights out and rates of assault, robbery, personal theft, household theft and vandalism, and a less dramatic, but still positive relationship shown for rates of sexual assault, break-and-enter and motor vehicle theft.

When the categories of people most likely to be victimized are examined many popular myths are dispelled. The victimization data provide a profile of the victim of crime against the person: he is typically a young unmarried male, living alone, probably a student or unemployed and with an active social life - interestingly, this is not very different from the profile that might be drawn of the offender. Significantly, the young male victim expresses little concern about or fear of crime even after he has been victimized.

Fear of Crime

Although only 5% of the residents in the seven urban centres feel unsafe walking alone in their neighbourhood during the day, and 40% feel unsafe after dark, women and the elderly are far more likely to express fears about their safety. Fifty-six percent of all women said they feel unsafe walking alone in their own neighbourhoods after dark (compared to 18% of the men), and even more significantly, 89% of the elderly (males and females combined) feel unsafe after dark. Fear of sexual assault no doubt feeds much of the more general fear women express. A full 65% of those who had been victims of such assault in the past year feel unsafe walking alone after dark, and 11% even feel unsafe during the day, even though the rates of sexual assault were relatively low when compared to other offences (about 6 per 1 000 females).

Reported and Unreported Crimes

As mentioned previously, more than half (about 58%) of the crimes described to interviewers were never brought to the attention of the police. Combining results from the seven cities, the crime most likely to be reported is theft or attempted theft of a motor vehicle (70% reported), although 11% of completed (actual) motor vehicle thefts remain unreported. The crime least likely to be reported is theft of personal property (29% reported). The seven-city averages mask considerable differences between the cities. There is little apparent consistency in the rank ordering of cities by tendency to report crimes. The survey data indicate that females have a higher reporting rate than males for sexual assault, robbery and assault, and that those 65 and over are more likely to report incidents than younger victims.

Clearly, a great many victims never come into contact with the criminal justice system. The most common reasons given for failure to report an offence are that the crime was 'too minor' (mentioned in two-thirds of the crimes in which no report was made); that 'police could do nothing about it anyway' (61%); and that 'it was too inconvenient' to make a report or victims 'did not want to take the time' (24%). For some, it would appear, the criminal justice system seems ineffective or confusing, and the prospect of becoming part of the process seems potentially costly and inconvenient. But the problems go beyond financial cost and inconvenience.

When reasons for non-reporting are analysed by offence category it becomes clear that the pattern of reasons given by sexual assault victims varied from the norm in some important respects. The most common reason given by sexual assault victims for not reporting is that police could not do anything about it (52%), but this was closely followed by 43% who cite concern about the attitude of police or courts towards this type of crime. Overall, this reason for not reporting a crime is given by only 8% of victims of crime. Fear of revenge by the offender, though rarely an issue for most victims, is common among victims of sexual assault (33%) or female victims of assault (21%).

Predictably the majority of unreported crimes can be classified as less serious - involving no injury and little material loss. Indeed most victims cited the minor nature of the incident as their reason for not reporting. Nevertheless, a significant amount of serious crime - even incidents which resulted in physical injury - is also unreported. For example, two-thirds of the women who had been sexually assaulted did not report the assault to the police. Here, concern about the attitudes of those within the criminal justice system is a major inhibiting factor. Similarly, women assaulted -

particularly by intimates - are likely to report fear of revenge as a reason for failure to report.

Finally, the data reveal that victims are most likely to report crimes which result in significant financial loss - rather than those which result in pain, injury and fear. For many, reporting crimes is less an act of justice (or even revenge) than a utilitarian act seeking redress, recompense or recovery. Perhaps if more were aware of the availability of criminal injuries compensation, more would report violent offences. Fewer than 5% of victims who suffer injury inquire as to their eligibility for such compensation. Similarly, if the criminal justice system was seen as offering practical assistance and information and assuring the dignity of the victim, more victims might see utility in reporting crimes.

The Victimization Survey has confirmed that property crimes occur much more frequently than crimes of violence, and that most of these offences result in low financial loss. Most incidents are never reported to police, mainly because victims themselves define these incidents as being too trivial to warrant police intervention. Crimes of violence are less frequent and do not necessarily result in serious injuries.

The data may provide some reassurance about the general level of safety and security in our society (particularly as compared with popular media representations of everyday life). However, this should not blind us to the distress which crime inflicts on some, either directly as the result of their primary victimization, or indirectly because of the loss of dignity, social status or emotional well-being. It is now evident that many very serious crimes never come to official attention. This is either because victims fear the consequences of making a report, or in certain situations such as domestic violence, victims are unsure about whether the incident is in fact a crime.

It would seem that victims have three major concerns: the concern not to be victimized again; to receive reparation for their loss or suffering; and to maintain their sense of personal dignity and integrity.

A NEW AWARENESS OF THE VICTIM

The question of why the situation of victims of crime has become the focus of attention by both the public and the state in recent times is indeed interesting. However, as in the case of the emergence of any social problem, the search for clues should focus on an analysis of the interests, concerns and contributions of specific groups.

The growing concern for victims of crime in Canada probably reflects the impact of at least four recognizable thrusts (Hastings, Ross: A Theoretical Assessment of Criminal Injuries Compensation in Canada: Policy Programmes and Evaluation, Department of Justice Canada, 1982). The first is that of victim-based groups who have organized in an attempt to change public attitudes and to obtain services or resources from different levels of government. The best known examples of such groups are probably those which emerged out of the women's liberation movement in the 1960's and 70's, and which established services and support networks for victims of sexual assault and wife battering. Their major concern is to reduce the consequences of victimization by providing services and information to victims of crime, and by working towards the prevention of future victimization (either through education of the public or pressure on the state to establish or modify victim-oriented programmes). These groups all tend to have a fairly specific sense of what their needs are, and of how these needs can be satisfied. Unfortunately, this very specificity also tends to limit their impact. Unlike the National Organization for Victim Assistance (NOVA) in the United States, there is no central focus or umbrella group for all Canadian victim advocacy groups. There are national associations which represent groups whose focus is on a specific area, e.g., the provision of service to victims of sexual assault or those established to meet the needs of traffic victims. But no one voice speaks for all victims. This approach can result in the provision of quality services to a specific target population. It can also mean, however, a lessened ability to exert concerted political pressure or to draw the benefits of the economies-of-scale or cost-effectiveness which might be available to more centralized and integrated organizations.

Secondly, the general public's fear of crime and of the personal probability of being victimized has resulted in a generalized pressure on the criminal justice system to 'do something'. The public perception seems to be that crime and violence are increasing, that the benefits of criminal activity to the offender are high, and that the certainty and severity of punishment of these offenders are low (Meiners, Roger: Victim Compensation: Economic, Legal and Political Aspects. D.C. Heath, 1978). Not surprisingly, the public is likely to translate this perception into frustration with the criminal justice system. In this context, victim and witness assistance programmes of all types are popular with the public, even though they do not attack the deeper roots of the problems of crime and victimization.

The issue, then, for the public is to find an acceptable balance between the fear of crime and the willingness and ability to pay the cost of protection from crime or its consequences. A concern for the victim is a logical extension of this, either in terms of reducing the costs to the victim or of a viable and cost-effective strategy for the state.

The third momentum has been sparked by those who promote victim/witness assistance programmes and services. People who are dedicated to the delivery of victim-witness services will obviously have a financial and emotional stake in seeing that their work is continued. The issue of survival of these groups in a period of fiscal crisis is indeed a reality, particularly as now it is accompanied by demands from certain sectors that governments spend less, not more.

The fourth thrust comes from within the criminal justice system itself. The argument of some criminal justice officials is that some consideration for the needs and concerns of victims will result in a more humane, effective and cost-efficient system.

From these four areas have come the primary pressures to develop and expand initiatives which recognize and deal with the needs of victims and witnesses of crime. The specific concern for the plight of victims and witnesses, the public's desire that something be done about crime, the interest of the members of public and private agencies in maintaining and enlarging their territory, and the criminal justice system's interest in victims all compete for attention. What is clear is that a great deal of energy is being expended in the direction of victims of crime. The problem is the very real possibility that victims and witnesses will get lost in the shuffle. This would seem to be ample justification for a much closer analysis of the actual situation of victims of crime in Canada. This topic will be the focus of the remaining chapters in Part II of this report.

CHAPTER 2:

VICTIMS AND THE JUSTICE SYSTEM

VICTIMS AND THE JUSTICE SYSTEM

The justice system is complex and its subsystems sometimes face competing or even contradictory tasks and pressures. Thus the concern in this chapter is twofold: firstly, to focus on the general question of how policy and law are made in Canada, and to identify the levels of government which are responsible for making decisions about victims; and secondly, to describe the specific place of the victim within the current framework of the Canadian justice system.

THE CONSTITUTIONAL CONTEXT

The fundamental distribution of powers to make law and policy in Canada is established in the Constitution Act which gives Parliament the power to enact criminal law and procedure and gives provinces the responsibility for the administration of justice. In addition, the provinces have jurisdiction over matters dealing with property and civil rights.

The basic criminal law is contained in the federally enacted Criminal Code of Canada, and the enforcement of that law is generally carried out by the provinces. Policing of the criminal law is primarily a provincial responsibility, and is carried out by municipal or provincial police or by the R.C.M.P on a contract basis with the provinces.

The prosecution of offences is also, mainly, a provincial responsibility. The general rule is that the provinces, through their Attorneys General, prosecute breaches of provincial statutes while the federal Attorney General prosecutes individuals charged under federal statutes. A major exception exists for prosecutions under the Criminal Code, which are carried out by provincial Attorneys General. The provinces also prosecute offences based on other federal statutes, such as the Juvenile Delinquents Act, due to the criminal nature of the offence and for other practical reasons.

The sentencing of offenders is a matter within the trial Judge's discretion subject to certain maximum and minimum provisions contained in the Criminal Code or other applicable statutes.

The Criminal Code provides that in certain cases a court that convicts an offender can order the offender to repay the victim for loss or damage to properties as part of the sentence. In 1978 the Supreme Court of Canada held in the Zelensky case that the order could validly be made as part of the sentence, but that the court could award such repayment only for ascertainable losses or damage to property. Awards for damages for pain and suffering or other losses, the amounts of which are in dispute, would appear to be the responsibility of the civil courts as falling within the provincial jurisdiction over property and civil rights.

The provinces provide for the award of Criminal Injuries Compensation to victims although the federal government cost shares these programmes. Criminal Injuries Compensation programmes exist in all provinces and territories with the exception of Prince Edward Island.

As part of their responsibility for the administration of justice, the provinces provide legal aid. The federal government cost shares the provision of legal aid to offenders in criminal matters.

Probation is based on the federal criminal law and procedure power and although authorized in the Criminal Code, it is administered entirely by the provinces.

Jurisdiction over corrections is divided between the federal government and the provinces. The Criminal Code codifies the 2-year rule, which has been observed since Confederation. Sentences of 2 years or more are served in federal penitentiaries while those of less than 2 years are served in provincial institutions. Parole is a federal responsibility and under the Parole Act the National Parole Board administers conditions of release in federal penitentiaries and the prisons of many provinces. Under the Act the provinces are also given the power to establish parole boards for inmates in provincial institutions.

It is in this general constitutional framework that recommendations directed to the federal and provincial governments respecting victims of crime must be viewed. The federal government would be the appropriate body to address recommendations concerning amendments to the Criminal Code: for example, the Criminal Code could set out procedures to ensure the prompt return of property. The provincial Attorneys General would be the appropriate forum to direct recommendations regarding the administration of justice including police practice, prosecutorial practices and the delivery of services for victims.

The key point, for our purposes, is that this division of authority makes it difficult to co-ordinate efforts and articulate a single and integrated policy for victims (Government of Canada: The Criminal Law in Canadian Society, 1982).

CIVIL JUSTICE AND CRIMINAL JUSTICE

The Canadian justice system specifies two approaches through which victims of crime may obtain satisfaction for their losses: the victim may seek civil redress for the damages or costs that are borne as a result of the behaviour of another, or the state may become involved through the criminal law. The distinction between civil and criminal law is not absolute. The two are not mutually exclusive and it is possible to seek reparation for the results of a crime through either or both processes. However, the rights and responsibilities of the victim differ from one type of law to another. For this reason, and because it is necessary to specify possible points of intervention and change, this section will comment upon the difference between civil law and criminal law.

Essentially, the division of responsibility is that the criminal law regulates public order and the response of society to offenders against that order, whereas the civil law provides private redress for the wrong done to the individual victim. As we saw earlier, the Constitution Act allocates responsibility for the former to the federal government, and for the latter to the provinces.

The origin of this development is of some interest, for in the early days of the English law, there was little distinction drawn between a civil wrong and a criminal wrong. If a person or his property were injured, either that person or his family would seek revenge: in this sense, all wrongs were considered to be civil wrongs. Consequently, blood feuds between families were not infrequent although the community might attempt to encourage the victim to accept compensation in the form of money.

The concept of the 'King's Peace' can be traced back to feudal times. The King began to put certain favoured subjects or property under his 'peace'. If the favoured subject or property was injured, the wrongdoer would be accountable to the King rather than the victim and would be liable to pay a fine to the King, or for more serious damage would be subject to physical punishment. As time passed, the King expanded the area of his 'peace' to cover all the subjects and lands in his kingdom. Breaches of the 'King's Peace' came to be prosecuted in the name of the King by his agents.

As a consequence the state's interest in controlling crime and in punishing the offender became supreme, and the importance of the victim's interest in retribution and reparation for the harm done was downplayed. Crime became a public relationship between an offender and the state, whereas damages were formerly a private relationship between an offender and a victim. Crime and criminal law came to be viewed as public concerns based on the belief that society is impossible without trust, and that crime is a menace to that trust. The maintenance of collective peace and security, especially in highly differentiated and stratified societies, is seen as justifying the formal response of the state against behaviour which is culpable, seriously harmful and deserving of punishment (Government of Canada: 1982).

CIVIL REDRESS FOR VICTIMS OF CRIME

The civil law deals with torts, which are a type of civil injury or wrong. A tort can be defined as some act or omission without just cause, which results in some form of harm to the victim. Torts may also be criminal offences, as in the cases of assault, theft, libel, or damage to property. In our legal system, civil and criminal remedies are independent of each other. The wrongdoer may be punished criminally and also be compelled to make restitution to the victim as a result of a civil action.

Presuming the victim can identify and locate the wrongdoer, the process is initiated by issuing a claim for damages designed to repair the losses suffered by the victim. The remedies obtainable by a plaintiff in a tort action are generally of three kinds: injunctive relief, restoration of property and damages. Where the plaintiff's aim is to put an end to certain conduct of the defendant, an injunction is the appropriate remedy. Where the defendant is in possession of specific property, restoration of that property is the appropriate remedy. Where a plaintiff seeks monetary restitution, the appropriate remedy is monetary damages.

Monetary damages are either general damages or special damages. General damage is that kind of damage which the law presumes to follow from the event complained of: an express amount need not be set out in the plaintiff's claim. Damages sought for pain and suffering are general damages. Special damages are damages which the law does not presume to follow from the event and therefore must be set out with particularity in the pleadings. These are pecuniary losses actually suffered such as lost wages, out-of-pocket expenses, medical and dental expense and costs to repair damaged property.

A plaintiff who suffers as a result of the defendant's act may not be entitled to civil damages in all cases. In order to recover, the defendant's act must be wrongful and the defendant must have owed a duty to the plaintiff (the plaintiff's rights must be violated). A second basic principle concerns remoteness of damage. A defendant is not necessarily responsible in law for all the harm the wrongful act may cause. Generally, the accused is only responsible for damage that is reasonably foreseeable. However, it is only the type of damage that must be reasonably foreseen, not the amount of damage.

A final principle in the law of torts is known as the 'thin skull rule'. Wrongdoers generally take their victims as they find them. Therefore, if the consequences of a minor assault are aggravated by the victim's state of health the wrongdoers may be liable to the full extent even though they had no knowledge of the victim's condition.

When damages are proven the court will make an 'appropriate award' but this is a very complex and difficult decision to be made by the civil court. The problem is that there is an absence of a coherent framework of theory and principles for assessing damages (McLachlin, Beverley: What Price Disability? A Perspective on the Law of Damages for Personal Injury, Canadian Bar Review, Vol. 59, 1981). The general principle of damages is to return victims as nearly as possible to the position they were in prior to the tort. This principle works well in cases where the victim seeks injunctive relief or the restoration of property. It does not, however, provide a clear guideline for establishing the amount of monetary restitution necessary to restore the victim.

There would seem to be three strategies for attempting to resolve this problem (McLachlin, Beverley: 1981). Traditionally, the courts have awarded for similar cases in the past rather than on the needs or injuries of a specific victim. In recent years this arbitrary approach has been replaced by two more recent strategies.

The first is the principle of 'full compensation' for actual monetary loss arising from the injury and this has been the dominant principle for the assessment of damages in Canada in recent years. The problem with this approach is that it is applicable only to pecuniary losses, and does not provide a rationale or guideline for measuring the monetary value of non-pecuniary losses such as pain or suffering. Moreover, there is no consideration in this approach of the potential detriment to the accused of awards based on this principle.

A second strategy is beginning to emerge in response to these criticisms: that is the principle of 'functional compensation'. This approach assesses damages on the basis of how an award can alleviate the consequences of the injury to a reasonable extent. The goal is to meet the needs and requirements of the victim rather than provide full compensation. The test in assessing damages is the demonstration of a reasonable function which the money claimed will service.

In any case, even if there were a consensus regarding funding principles there would still be a number of thorny questions facing the courts in any attempt to assess damages. For example, consideration would still have to be given as to whether payments should be periodic or lump sum, whether awards should be adjusted for inflation, taxation or the value of lost earning capacity and so on.

Once an adjudication is made that the defendant is liable for the plaintiff's damages in a particular amount, the victim may feel that justice has been done. However, it may be more difficult for the plaintiff to collect the money from the defendant than it was to prove entitlement, especially if the defendant is in jail. There are legal mechanisms for the plaintiff to execute upon the judgement but they are time-consuming and costly. A lien may be placed on the defendant's land, the sheriff may be directed to seize a bank account and personal property, wages can be garnisheed and the defendant can be summoned to court regularly to be examined with respect to any assets and income. Ultimately, though, an impecunious defendant is 'judgement proof' and the plaintiff can not recover. Where the plaintiff does recover damages, they may be whittled away by the legal costs involved in bringing the action and any costs incurred in executing upon the judgement.

Limitation periods may also be an impediment to launching a civil action for damages. The rationale for a limitation period proceeds from the fact that the plaintiff has the onus to prove the case on a balance of probabilities and that the ability to do so will recede with the passage of time.

While the limitation period for a tort action is generally six years, the period may be much shorter, as for example with actions brought against police and public officials. These must be commenced within three months and notice of the plaintiff's intention to bring the action must be given within seven days.

All things considered, even a successful civil suit is likely to be a costly, frustrating and time-consuming adventure for most victims of crime. Even so, that might be an acceptable cost if the majority of victims could actually use the process to meet their needs. Unfortunately, this is far from being the case. Most victims have little or no real probability of obtaining full redress. Given that few tortfeasors are found, and that only a proportion of these are willing and able to make adequate restitution, one can argue that the victim is seldom realistically in a position to pursue civil action. The tendency of most victims to be reluctant to pursue civil action seems to be based upon a realistic assessment of their chances of success. Moreover, the physical and emotional injuries which the victims may have suffered, and their involvement in a complex, expensive and sometimes intimidating process simply cannot be satisfied by civil action.

THE CRIMINAL LAW AND VICTIMS OF CRIME

Concern for the plight of the victim is beginning to be an accepted part of the policy of the criminal justice system. For example, the federal government in its recent policy statement in The Criminal Law in Canadian Society (1982) has included such a focus in its general statement of the purpose and principles of the criminal law. It argues that "whenever possible and appropriate, the criminal law and the criminal justice system should promote and provide for opportunities for the reconciliation of the victim, the community, and the offender, and redress or recompense for the harm done to the victim of the offence".

This is exemplary, and as we shall see, it promises a modification of the current neglect of the specific interests of the victim in reparation for the harm done. However, policy and promises are not law. The simple fact of the matter is that victims of crime have very few legal rights, though they can benefit from certain provisions of the Canada Evidence Act, the Young Offenders Act and the Criminal Code.

The Canada Evidence Act specifies that:

(a) A person who is assaulted by his/her spouse is a competent and compellable witness for the prosecution in proceedings brought against the spouse. The Canada Evidence Act, subsection 4(4) preserves the common law exception which allows a spouse to testify in cases involving his/her life, health or liberty. Amendments to the Canada Evidence Act made by Bill C-127 have expanded the situations where a spouse is a compellable witness. Subsection 4(2) provides that where a husband or wife is charged with certain offences including contributing to juvenile delinquency, sexual assault, child abduction and bigamy, a spouse is a competent and compellable witness. In addition, subsection 4(3.1) provides that where a husband or wife is charged with certain offences against a young person under 14, including murder, manslaughter, criminal negligence causing death, and assault, the spouse is both competent and compellable. These amendments will assist in the prosecution of child abuse cases.

(b) Witnesses reluctant to testify because of fear of self incrimination may invoke the protection of the Canada Evidence Act and answer incriminating questions with the assurance that the evidence given will not be used in subsequent proceedings against them (s. 5). In addition, the Charter of Rights and Freedoms provides in s.13 that a witness who testifies in any proceedings has the right not to have any incriminating evidence used against him or her.

The Young Offenders Act which was passed by the House of Commons in May 1982 but has not yet been proclaimed in force also recognizes the concerns of crime victims. The Act provides a wider range of dispositions to provide compensation or restitution to the victim in money or in services.

In addition, where a pre-sentence report is prepared it shall contain the results of an interview with the victim where it is reasonably possible.

A perusal of the Criminal Code indicates a number of references to victims or to witnesses.

1. Section 10 stipulates a victim's right to sue for civil damages.
2. Sections 34-37 provide that a victim may use self-defence to repel an assault. A victim of an unprovoked assault may use self-defence provided, generally, that the force used to repel the assailant is not disproportionate to the force used by the assailant.
3. Sections 40 and 41 allow for the defence of property against trespass or theft. A victim is justified in preventing a trespasser from removing moveable property from his possession but cannot strike at or cause bodily harm to the trespasser or thief. Where the trespasser persists in removing the property, victims are justified in using reasonable force to defend their property. Victims are also justified in using as much force as is necessary to prevent a person from forcibly entering their homes without lawful authority and a victim may use reasonable force to repel the trespasser.
4. Section 381 provides that certain intimidating behaviour is a summary conviction offence. Where violence or threats are used to compel another person to do something or refrain from doing something they have a lawful right to do, a criminal offence is committed.
5. Sub-section 442(1) provides that the public may be excluded from the courtroom in certain circumstances. In many instances, victims dread their appearance in court because they anticipate a room filled with curious spectators. Thus where the presiding judge is of the opinion that it is in the interests of public morals, the maintenance of order or the proper administration of justice to exclude any or all members of the public from the courtroom he may do so. It should be kept in mind, however, that in general, criminal proceedings take place in open court.

6. Sub-sections 442(2), (3), and (3.1) apply with respect to sexual offences. Where an application is made to exclude members of the public, pursuant to section 442(1), from the trial of a sexual assault offence, where the judge does not make the order, reasons must be given with reference to the circumstances of the case. In addition, the victim, on application, is entitled to an order directing that his or her identity and any information that could disclose his or her identity shall not be published in any newspaper or broadcast. The presiding judge is obliged to inform the victim of the right to make this application at the first reasonable opportunity.

7. Sections 637 to 643 provide a complete code of procedure for taking evidence by commission. Where a witness or victim is unable to attend the trial and give oral evidence due to illness, absence from Canada or some other good and sufficient cause, the court may order that the necessary evidence be taken by commission upon the application of the concerned party. Usually the evidence is taken by a special examiner and where necessary at the witness's bedside. The witness is examined and cross-examined following the same procedure as if he or she were in court. In order for the evidence to be read in at trial, it must be proved that the witness is still unable to attend and give oral evidence.

8. Bill C-127, which became law January 4, 1983, made amendments to the Criminal Code regarding sexual assault. Many of the amendments have implications for sexual assault victims:

   (a) The concept of rape is abolished and replaced by a three-tiered structure of sexual assault offences focusing on the violent nature of the assault rather than the sexual nature. A sexual assault can be committed against a male or female by a male or female and a husband or wife may be charged with the offence in respect of his or her spouse. (Sections 246.1, 246.2, 246.3);

   (b) Corroboration of the victim's testimony is no longer required for a conviction on a sexual assault charge. (Section 246.4);

(c) The rule regarding recent complaint is abolished. The court cannot comment on a victim's failure to complain or the lapse of time between the complaint and the attack (s.s. 246.5);

(d) The admission of evidence of the victim's sexual conduct with someone other than the accused may only be allowed in three narrow circumstances: where the prosecution has already raised such evidence, where the accused contends that he or she did not have sexual contact with the victim at all and wishes to prove from some physical evidence that some other person was responsible, or where the victim is alleged to have had sexual contact with more than one person on the same occasion and the accused wishes to allege belief in consent from that conduct. To determine if the evidence will be admitted the defence must provide notice of their intention to adduce such evidence and particulars of the evidence sought. An in camera hearing, at which the victim is not a compellable witness, is held to determine if the requirements of the section have been met. Publication of the evidence or information given is prohibited (s.246.6);

(e) The admission of evidence of a victim's sexual reputation to challenge or support his or her credibility is expressly forbidden by section 246.7.

9. Section 653 provides that a victim of an indictable offence may apply for an order of compensation from the accused at the time the accused is sentenced.

10. Section 663 (2)(e) provides that where an accused is convicted of an offence and is placed on probation, the probation order may contain a condition that the accused make restitution or reparation to any person aggrieved or injured by the commission of

the offence for the actual loss or damage suffered.

11. Section 388 provides that compensation can be ordered for an amount up to $50.00: as part of the sentence of an accused found guilty of the summary conviction offence of causing wilful damage or destruction of property not exceeding $50.00.

The terms restitution and compensation require clarification. This is an awkward task since these words are used in a different and inconsistent manner both by policy makers and in the Criminal Code. The distinction proposed by the Law Reform Commission of Canada provides a useful definition:

> "Restitution is a sanction permitting a payment of money or anything done by the offender for the purpose of making good the damage to the victim... Restitution refers to the contribution made by the offender towards the satisfaction of his victim. It moves from the offender to the victim and is personal. 'Compensation' on the other hand, is impersonal and refers to a contribution or payment by the state to the victim." (Law Reform Commission of Canada, 1974: 8: emphasis added.)

Restitution and compensation therefore represent two different, but complementary, strategies for repairing or restoring the losses of victims of crime. Restitution is the strategy of adapting the sentencing process to require the offender to recognize the losses of the victim, and to attempt to restore these losses. Compensation is a strategy based on the recognition of the limits of restitution as a solution to the costs of crime. It generally involves the establishing of government-based Criminal Injuries Compensation Boards to which a victim can apply for restoration of certain forms of loss.

It is necessary to make this distinction because many academic and legal authorities have tended to blend together the concepts of restitution and compensation. This tendency reflects a lack of consistency in the use of these terms within the Criminal Code. Generally the Criminal Code uses the term restitution to refer to the return of property (including money) to a victim; and the term compensation to describe a sentence where an offender is required to pay money to a victim for the harm or damage which has been done. This report will reserve the word restitution to cover the gamut of reparative sentences which runs from the simple return of property to a victim, to the requirement that the accused make some form of payment (either monetary or service) to repay the victim for loss or damage to the property involved in the crime. Unless otherwise noted, compensation will refer only to provincial or territorial criminal injuries compensation programmes.

CRIMINAL INJURIES COMPENSATION SCHEMES

Criminal Injuries Compensation programmes exist in all the provinces and territories in Canada, with the exception of Prince Edward Island. While no two of these programmes are identical, they do share a number of common features.

All the Canadian compensation schemes are designed to aid the victims of violent crime. This includes surviving dependants of victims of homicide, and usually persons responsible for the maintenance of the victim. All programmes also compensate 'Good Samaritans' who are injured in the course of attempting to enforce or assist in the enforcement of the law. Finally, all jurisdictions consider the possible contributory behaviour of the victim in assessing eligibility and the size of an award.

The compensation schemes are all designed to alleviate the pecuniary loss of the victim. Compensation may be obtained for losses incurred as a result of the injury, death or disability of the victim. In addition, compensation can also cover the losses to dependants as a result of a victim's death, to pay for the maintenance of a child born as a result of rape, or for other expenses deemed reasonable by the jurisdiction in question. Some programmes also compensate for pain and suffering.

Crime compensation programmes are funded on a cost-sharing basis. The federal government contributes to the provinces the larger of 10 cents per capita or $50.000, but not in excess of 50% of the compensation paid. The federal government compensates the Territories for 75% of the compensation awarded, subject to certain maximum amounts for individual awards (Statistics Canada: Criminal Injuries Compensation, 1980).

Obviously, so cursory a discussion does some injustice to the differences in rationale and design between the various compensation programmes. The interested reader can, however, obtain detailed information on this subject (see Hastings, Ross: 1982; Statistics Canada: 1980; Burns, Peter: Criminal Injuries Compensation, Butterworth, 1980; and Law Reform Commission of Canada: Working Paper No. 5: Restitution and Compensation, 1974). In addition, the Federal Department of Justice is currently sponsoring evaluations in a few selected jurisdictions, so it should soon be possible to assess more fully and realistically the benefits of various methods employed.

For the present,however, there seems little reason to believe that compensation is making a great contribution to a large number of victims. For instance, a total of $14 522 356.61 was paid during the 1981-82 fiscal year on the basis of 3 041 completed decisions - this resulted in an average award of $2 859.96. No doubt these awards contributed to alleviating the losses of these victims. The problem is that the 3 041 beneficiaries represent only an extremely small proportion of all the victims of crime during the period in question. For that matter, a 1983 Department of Justice survey has found that few victims are even aware of the existence of such programmes. It would seem that in the present circumstances Canadian criminal injuries compensation schemes can only make a very limited contribution to alleviating the financial losses of victims of crime.

CHAPTER 3:

THE IMPACT OF CRIMINAL JUSTICE PRACTICES ON VICTIMS

THE IMPACT OF CRIMINAL JUSTICE PRACTICES ON VICTIMS

Introduction

It is not possible to understand the impact of the criminal justice system on the victim without first understanding the process of events from the commission of an offence to the sentencing of an offender. In this chapter a basic description is given of each step in that process indicating the extent to which victims are, or are not, involved and the possible effects upon them of the decisions made.

The important role played by the victim in mobilizing the Criminal Justice System is evidenced by the fact that only a small proportion of offences are visible to the police in the normal course of their duties. Most criminal offences are brought to the attention of the police because a citizen, usually a victim, has reported the offence to them.

The extent to which citizens report offences, either against themselves or against others, is probably a good indicator of the trust and confidence people have in the system and in its ability to assist them. It is difficult, of course, to determine how much crime is not reported and several countries including the U.K., the U.S.A. and Canada have attempted, mainly over the past few years, to measure this through the medium of victimization surveys.

The Victimization Survey conducted in 1982 has been described briefly in the previous chapter. From the data collected, which revealed the large proportion of unreported crime, it would seem that for many victims the criminal justice system may appear too complex, confusing and demanding and the prospect of becoming involved seems intimidating, costly in time and generally inconvenient.

Some indicators as to why many victims do not report offences may be gathered from an examination of the criminal justice process, looking particularly at what the system expects or demands of the victim and the victim's expectations of the system.

THE COMPLAINT

Victims will find that many demands are placed upon them by the criminal justice system once they report that a crime has been committed. They are expected to co-operate with the police and provide them with information during their investigation. They may be deprived of property for extended periods of time if deemed necessary for the investigation. They may have to attend at the police station to attempt to identify the offender in a line-up or from photographs and they are expected to attend court as witnesses in any resulting criminal proceedings which could include a preliminary hearing and a trial and may involve numerous adjournments and delays. However, for all the inconvenience caused and the demands placed upon their time and co-operation, victims receive little consideration in return. Even though they have suffered the loss or injury which has set the whole process in motion, they are relegated, by the very nature of the system, to the rank of any other witness.

After victims have made the decision to report a crime they will call the police or another person will call on their behalf. This in essence means calling a complaint desk or dispatcher and may result in the filtering out of incidents not deemed essential for police intervention. A neighbour who reports a domestic quarrel may be told to wait half an hour and call back if the matter has not resolved itself. A teenager who has had a bicycle stolen may be asked to provide necessary information over the phone and be told that the matter will be 'looked into'. Such a response may be unsatisfactory and frustrating for the victim. In most cases police will be dispatched to the scene of the crime to gather the necessary information.

The experience of assaulted wives is particularly significant. Where a neighbour calls and reports a domestic problem, the woman's life may be in danger and a response by the police that the situation is a private matter is inappropriate. Intervention is essential to ensure the woman's safety and to acknowledge that wife assault is a crime. Where the victim herself calls the police she is acknowledging, perhaps for the first time, that she is a victim of a crime. The victim expects and requires the police to attend the scene and probably to arrest and remove her assailant.

The police officers who respond may attempt to diffuse the situation rather than treat it as a crime. They may perceive an unwillingness on the part of the victim to follow through with charges. Their past experience may indicate that where a charge is laid the victim and her assailant later reconcile and the victim will no longer co-operate. They may also believe that laying a charge will aggravate the situation. Although their reasons may be understandable such a response does not acknowledge that the incident is in fact a crime.

The decision to report the crime may be the only decision the victim will make. Once the police attend at the scene of the crime they assume the responsibility for the investigation, the apprehension of the suspect and any charge that is laid.

The police may require the victim to provide necessary information in order for them to investigate the incident but once this is accomplished it is understandable that the police officer's concern is more likely to be directed at apprehending the offender than at reassuring the victim. A single woman may return home to find her front door broken down and her home vandalized. She may have no one to turn to for companionship, or assistance in repairing the damage; she may not know what is expected of her vis-a-vis the investigation; she may have not thought to ask the police officers their names and have no idea how to contact them for information.

The needs of other victims may be greater. Victims of sexual assault require emotional support, medical help and advice about the consequences of reporting the incident. Sexual assault crisis centres can provide essential information to these victims if they are contacted at the appropriate time.

Several Canadian police forces have established a policy of providing victims with a card referring them to a number of agencies available to provide essential services; for example, sexual assault crisis centres, transition houses and local victim/witness service agencies. Some police forces have established victim service units which will contact the victim and provide necessary information.

In addition to the victims' need for services to assist them in dealing with the immediate consequences, they will want to know what happens next. The promise by the investigating officers that 'we will be in touch' will be taken very seriously by the victim who expects to be advised that a suspect has been apprehended and charged or that the investigation has been concluded without success.

If these comments on the experience of victims in lodging a complaint are interpreted as being critical in nature, that criticism is directed at the system itself and not at police officers whose task is often difficult and sometimes complicated. Indeed, according to the Victimization Survey, those victims who did report incidents to the police were typically positive in their appraisals of police promptness, courtesy and overall case handling. Young victims were far less likely than older victims to make such positive evaluations. Least likely to be satisfied were the victims of sexual assault and robbery.

THE INVESTIGATION

In the ordinary course of events police will respond to the victim's call for assistance by attending at the scene of the crime. As mentioned earlier the police may find the victim in need of medical treatment, emotional support or to be angry or outraged. Despite the victim's state of mind, the police must begin to compile a general occurrence report including information about the victim, the offence, any leads to identify the perpetrators and the extent of the damage suffered or property lost.

While the reaction of victims will vary, it is probable that a victim of personal violence will be most concerned with obtaining medical treatment and may not be receptive to police questioning. A victim of break-and-enter or theft, however, will be more concerned with recovering the stolen property or with compensation from an insurance company. It will be necessary to provide a description of the missing goods and estimate their value. This may be a difficult process for the victim who will be upset and probably not thinking clearly.

In addition, victims may feel embarrassed or at a loss if they cannot quickly provide an inventory of their possessions or if they have not recorded serial numbers. It may also be difficult for a victim to place an accurate value on goods owned for a long period of time.

Victims who report a crime to the police consider the case to be 'their' own. Following the compilation of the occurrence report by the police, victims expect further contact. They want to know if the investigation is being actively pursued and if a suspect has been apprehended. They may also expect to have some input into the investigation of 'their' case. Victims will also want to know who is investigating 'their' case as it may not be the officers who attended at the time of the incident. Obviously the police department will have certain priorities, and a murder investigation will demand more attention and personnel than a break-and-enter. From the victims' point of view the police are working for them and 'their' case is important.

In many cases the police will have leads to follow and may have information from similar offences that would point to a particular person being responsible. The victim may be called to attend the police station to make an identification. For many victims this will be inconvenient; transportation may be a problem or a parent may have no one to mind his or her children. The victim may feel obliged to attend immediately, may not ask if a more convenient time could be arranged or may not be aware of any victim service agencies which can provide assistance. A sexual assault victim may not be emotionally prepared to view a line-up of suspects which could include her attacker but may feel intimidated by the system which requires and demands her co-operation.

Where suspects have not been identified and where the police have no further leads to follow, their contact with victims may be minimal. The victims' attempts to ascertain whether 'their' case is being actively pursued may be time consuming and frustrating.

A victim who calls the police station for information may only be able to provide the date of the incident and its nature. The officers who made the report may be on patrol or off duty; they may not receive messages for a few days and when they do they may not be able to help because the case has been assigned to another officer. The victim must then await another call to inquire about the status of the investigation. Such a procedure is frustrating and inconvenient for the victim, but it is no less frustrating for the police who no doubt would welcome a procedure which provides the victim with basic information.

A victim who has lost property may be required to attend the police station from time to time to view stolen property seized by the police in the hope of identifying the victim's own property. Although this may be inconvenient, most people will be glad to oblige in the hope of recovering their property. However, where property has been recovered a number of factors may have arisen in the interval to effect the return of that property. Stolen property may have been sold to innocent third party purchasers; insurance companies may have acquired subrogated ownership rights in the property after satisfying the claims of the victim; the property may be altered or may have deteriorated.

Research has indicated that recovery rates for stolen property are generally low although recovery rates for stolen automobiles are exceptionally high due to their visibility and licensing. Police report that recovery rates are better than the research indicates and emphasize that the victims can assist in the recovery process by providing accurate descriptions and serial numbers where possible. Much stolen property is discovered in pawnshops and in large quantities where a fencing operation exists.

Where property is recovered which is not required for the investigation, the police will generally return it to the victim upon presentation of proof that the victim is entitled to it.

Where property is recovered, or seized under warrant as part of an investigation, preliminary inquiry, trial or appeal, the Criminal Code governs its detention and disposition. The Code provisions are all directed at insuring the integrity of the things seized so that they will not be tampered with as evidence. In addition, all evidence must be physically accessible to the accused due to the right of the accused to inspect all evidence and exhibits involved in the trial proceedings.

Although the Code provides that property may be held for three months or until it is required for the trial, this may be misleading, since in many cases there are significant delays between an accused's first appearance in court and the subsequent trial.

Victims are often required to bear a financial or emotional burden while their property is being withheld from them by the police or court. For example, one can understand the burden placed on an elderly victim robbed of a T.V. set without resources to replace it. The victim will expect its prompt return where it has been recovered and will be disappointed and frustrated with the delay.

Given the provisions of the Code, the police have little or no authority to attempt innovative forms of property disposition in the absence of the co-operation of defence counsel, Crown Counsel and judges. As a result, the process of returning property is often time-consuming, expensive and frustrating both for victims and police.

In other words what the victim may interpret to be a lack of co-operation by the police is often simply due to the fact that the law requires the police to abide by certain procedures. Either the law must be changed or its effect must be explained thoroughly to the victim.

THE CHARGING PROCESS

Where the police have been successful in their investigation of the reported crime and believe they have identified the perpetrator, the next step is for the appropriate charge to be laid. In Canada, an offence is generally brought within the jurisdiction of the criminal courts by the 'laying of an information' before a justice of the peace.

Most informations are sworn by the police who at this stage will lay the most serious charge or charges justified by the circumstances of the case. This is usually done without any advice from Crown Counsel in all but very serious cases.

After the charge has been laid the police investigation may continue, further evidence may become available or expected evidence may fail to materialize. In addition, communication between the defence counsel and prosecutor may indicate the defence's evidence. Thus, it may appear to Crown Counsel that other charges are more appropriate. The result is that the charge or charges laid by the police may be either increased or reduced in their number or severity.

Indeed, it may be decided that there should be no prosecution and all charges will be withdrawn. An example of the latter is a case where there must be corroboration of a witness's evidence and there is none. It should also be noted the Crown Counsel will on rare occasions decide that the public interest requires that a prosecution be withdrawn although sufficient evidence to proceed does exist. An example might be where an accused is of advanced age or in poor health or where a trial would have a seriously detrimental effect upon a Crown witness.

This is a proper and a necessary fine-tuning procedure which must come into play if the police are not to be the final arbiters of what charges proceed to court. Charges should not be reduced unless there are valid reasons based on the evidence available and keeping in mind the probable outcome. In this procedure the defence counsel will attempt to convince Crown Counsel that the circumstances justify only less serious or fewer charges. This is a proper exercise of an accused's right so long as Crown Counsel bases the final decision only upon the evidence realistically anticipated to be available at trial.

At this stage in the proceedings, it is considered the proper practice for Crown Counsel to take into account the position of the victim as it has been conveyed to them either by the police or by the victim. The extent of personal injury or loss suffered by the victim may be a major factor in determining Crown Counsel's final position on which charges proceed to Court. It is accepted that Crown Counsel are under a duty, if requested, to explain to any victim the reasons for any reduction or withdrawal of charges. Indeed, in many cases the nature of the modifications would require that the Crown Counsel offer an explanation to the victim whether or not a request for one is made.

There also exists a process commonly referred to as 'plea bargaining' which lacks official recognition in Canada. In this process, charges may be reduced or withdrawn, sentence or a range of sentence may be agreed upon by the Crown Counsel and defence counsel. However, there are many instances where charges are reduced or withdrawn or an inadequate sentence agreed to without proper consideration of the evidence available. We must ensure that counsel are sensitive to the needs and wishes of victims and that counsel consider these needs in any 'plea bargaining'. We must ensure that victims do not feel cheated or become confused over a result which they do not understand.

It should also be borne in mind that any citizen can lay an information if there are 'reasonable and probable grounds' to believe that an offence has been committed. In order to do so a victim must attend before a Justice of the Peace and swear under oath the facts that gave rise to the charge. The victim will then have the burden of prosecuting the case, i.e., proving the charge beyond a reasonable doubt. However, the Crown Counsel may intervene and prosecute the charge or alternatively may intervene and withdraw the charges. Such discretion is likely to be confusing to the victim who has independently initiated the proceedings.

In many parts of the country private prosecutions have been encouraged in cases of domestic violence. This places an added burden on the victim who is required to lay an information and prosecute the case. This only serves to aggravate the serious problems already faced by the victim.

PRE-TRIAL RELEASE PRACTICES

In many instances a victim is unaware that a suspect has been identified, that a particular charge has been laid or that the accused has been released pending the conclusion of the case in court. A victim will be frustrated, confused and perhaps fearful to meet the perpetrator on the street following his apprehension. This reaction stems from the victim's general lack of information concerning pre-trial release procedures and the particular circumstances of the specific case.

A victim expects the perpetrator to be 'arrested', that is, locked up until the trial. Most victims are unaware of alternative measures to secure the accused's attendance at trial.

A police officer may issue an appearance notice to the suspect at the scene of the crime or later, or the suspect may be arrested for certain offences and brought to the police station where the officer in charge may decide to release the suspect on a promise to appear or on a recognizance.

Generally police may only detain the accused where it is necessary in the public interest; for example, to establish identity, preserve evidence, prevent the repetition or commission of an offence or where it is the only way of securing the accused's attendance at trial.

An accused who has been detained at the police station by the officer in charge must be brought before a Justice of the Peace without unreasonable delay and within 24 hours. In the majority of cases, the Justice of the Peace has jurisdiction to release the accused prior to the trial. The general rule is that the accused will be released unless Crown Counsel 'shows cause' why continued detention is required. The burden of establishing why the accused should be detained rests with Crown Counsel in the majority of cases. Generally, detention is only justified if necessary to ensure the accused's attendance in court or if necessary in the public interest or for the protection and safety of the public having regard to the circumstances of the case.

The accused who is released will normally return to the community upon a written promise to appear. Crown Counsel may, however, establish that a more restrictive form of release order should be made and the Justice may direct that certain conditions be imposed upon the accused; for example, that the accused refrain from the consumption of alcohol or report regularly to the police.

The Crown Counsel may request particular conditions especially in serious cases where a victim may fear intimidation or revenge. A condition that the accused stay away from the victim is not uncommon. However, in many instances the victim is unaware that the issue of the accused's pre-trial release has been considered and has had no opportunity to express his views or voice his concern. Most victims would undoubtedly request that a condition be imposed on the accused to stay away from the victim. Information that any breach of such a condition would result in the immediate arrest of the accused would also alleviate the victim's fear of revenge or intimidation.

At this point an accused has been identified, a charge has been laid and a decision has been made whether the accused will be detained in custody or released pending the conclusion of the criminal process. The victim has played little part in any of these decisions and may not have even been informed by the police that this has occurred.

DIVERSION AND CONCILIATION PROCEDURES

As indicated earlier, most criminal incidents do not result in a court hearing. Decisions by the victim not to call the police or the exercise of police discretion not to lay charges but to deal with the incident in another way are common. In addition, instead of proceeding with criminal charges the Crown may have the option of referring the case out at the pre-trial level to be dealt with by settlement or mediation procedures. In the past the prosecutor's choice was thought to be to do nothing or to prosecute fully. In some jurisdictions pre-trial diversion has now been recognized as an alternative; the alternative is not a legal one but is discretionary and practical.

Diversion can occur at any point after the offender has been arrested or charged and prior to the commencement of a trial. It operates on an undertaking by Crown Counsel that criminal proceedings will be terminated if the offender fulfills the terms of the pre-trial settlement reached through diversion.

Diversion involves interaction between the victim, offender and community, but must protect the rights and liberties of victims and offenders to the same extent as traditional procedures.

Diversion programmes operate in some communities as private systems on a pilot project basis and are usually oriented toward some form of community service. In some provinces diversion programs are operated by those involved in corrections, including probation officers.

One advantage of diversion is the scope it offers for participation by the victim in the resolution of the incident. A reconciliation between the victim and offender with the assistance of a mediator resulting in a mutually satisfactory settlement may result in greater satisfaction for the victim, and the benefits to the offender are obvious. Diversion programmes are a vehicle which allows for victim input. Where the traditional criminal justice process is followed the victim has no status as a party and has little opportunity to make his views known to the court. In addition, the sentence imposed on the offender will not usually benefit the victim unless the court has ordered compensation or restitution as part of the sentence.

Some prosecutors are of the opinion that where there has been a previous relationship between the victim and offender and the relationship, is likely to continue, pre-trial settlement or diversion is appropriate. Such a rationale has been used in wife assault cases. Although the victim and offender may continue their relationship, other factors must be considered before the offender is diverted, such as the violent nature of the offence, the likelihood of repetition, the safety of the victim and generally the lack of treatment facilities available for men who batter.

There are, unfortunately, few services across the country which offer specific treatment or counselling to assaulted wives. Where these are available, diversion may be the appropriate way to deal with wife assault. Often, this will coincide with the wishes of the assaulted wife and at the same time give recognition to the fact that the offender's conduct should not be tolerated. The threat of the resumption of criminal proceedings would encourage the participation of the assailant and would express society's intolerance for such criminal behaviour.

THE TRIAL

A criminal trial is an adversarial process between the state, represented by the Crown, and the accused, who may be legally represented by defence counsel whose task it is to present the best defence possible for the accused within ethical limits. The goal of the defence is to raise a reasonable doubt about the accused's guilt, although it is not necessary for the defence to disprove guilt or prove innocence. The burden of proof lies on the Crown.

The victim of the crime is in reality unrepresented although the victim's interests are considered by the Crown. Crown Counsel have a special duty to the court; their function is not simply to present enough evidence to result in a conviction against the accused. Crown Counsel must ensure that all relevant evidence is placed before the court, even if that evidence might point to the innocence of the accused. They must ensure that 'justice' is done and is seen to be done, and they must balance the interests of the victim, the offender and of society. While the victims' interests are considered by the Crown Counsel, the latter cannot advocate those interests exclusively, since they do not represent the victims.

The majority of criminal cases are disposed of in the Provincial Court. Only a small proportion of accused proceed to trial in a higher court and most are likely to appear before a judge alone rather than a judge and jury.

The Criminal Code, Charter of Rights and Freedoms, Evidence Acts and common law provide many safeguards for the accused but very little is said about the role of the victim. As we have pointed out, the victim has no status in the criminal proceedings. The only official recognition stems from the victim's role as witness. The opportunity to give oral testimony with respect to the crime may have a positive effect on the victim. However, many victims never have the opportunity to give such testimony when one considers the number of cases that are disposed of by a guilty plea, or are diverted or where the victim's testimony is not required. The testimony given by the victim at trial will be limited to answering questions put by the Crown and defence counsel and will generally be restricted to who or what was seen or heard and to the actual damage or injury which resulted. Victims can not use this as an opportunity to state their views about the character of the accused, the sentence that should be imposed or the full impact of the crime upon them and their families.

The accused's first appearance before the court is in 'remand court', that is the Provincial Court. In the majority of cases the accused enters a plea of guilty in which case sentence may be passed immediately or a date for sentencing may be set. If the accused indicates a plea of not guilty a trial date will be set. The date is usually the next available date for the court when Crown Counsel and defence counsel are also available. Crown Counsel seldom consider the convenience of witnesses when setting the date unless they have been specifically advised that a particular witness is unavailable during a certain period. The trial date set may be many weeks from the date of the accused's first appearance. The only notification the victim may receive is by way of a subpoena to appear in court on the appointed day.

For certain more serious offences a preliminary inquiry will be conducted before a provincial court judge to ascertain whether there is sufficient information to warrant the accused's committal for trial before a higher court. Where a preliminary inquiry is required the date will be set by the court in consultation with Crown Counsel and defence counsel. Again it may be weeks or even months away. Where the victim's evidence will be required at the preliminary inquiry Crown Counsel will most likely contact the victim prior to the hearing to review the evidence. However, the victim will be officially advised of the date by receipt of a subpoena. Where the accused is committed for trial at the conclusion of the preliminary inquiry a date for trial will be set, again in consultation with the Crown and defence counsel. The trial date may be several months away and may require the victim's further participation.

Notwithstanding the delays involved in scheduling dates, further delay may result from adjournments. The defence or Crown Counsel can request an adjournment either before or during a trial or preliminary inquiry. The court may in its discretion grant any number of adjournments but will be guided by principles of fairness. A trial cannot be adjourned for more than eight days without the consent of the Crown and defence counsel; however, it may be impossible to schedule another date within eight days.

Understandably, the victims who have re-arranged their own schedules to allow for their participation at trial will be frustrated and further inconvenienced by a request for an adjournment at the opening of the trial. Similarly where victims and/or witnesses appear for trial to discover that the accused has decided to change the plea to guilty, their time has been wasted. Defence counsel often fail to advise the Crown of their client's intention to change a plea and thus Crown Counsel cannot advise their witnesses that they will not be required.

Victims may be required to take time off work without pay, arrange babysitters for their children or travel long distances to attend the trial. The witness fees they receive cannot truly compensate for their out-of-pocket expenses. Furthermore, they may sit in a waiting room most of the day before their evidence is required or be told to return the next day if the trial will not be completed. Most would prefer a system whereby a court clerk would call them an hour before they would likely be required to testify. Such an on-call system would be especially beneficial to those who will lose time and wages from employment which will not be recovered from low witness fees.

The victim's experience as a witness may be further aggravated by confrontation with the accused and/or witnesses for the defence who share the waiting room prior to trial. In many cases victims are intimidated by this confrontation which may cause trauma especially in cases of violence or sexual assault. It is only common courtesy to ensure that a victim is afforded some privacy or waiting room away from the offender and those who may attend with the offender for moral support.

Many victims do not want to participate in the criminal justice process and their involvement as witnesses will be especially problematic. Their lack of co-operation may arise from offender intimidation, the general inconvenience of the process or simply fear of giving their evidence in a public courtroom. Some victims anticipate that the courtroom will be crowded with curious spectators and press although this is rarely the case. However, for victims of sexual assault or the families of murder victims this may be a real concern and an understanding Crown Counsel can be of great assistance to such victims. The Criminal Code provides for in-camera hearings in certain situations and for the prohibition of publication of a victim's identity in sexual assault cases. The knowledge that Crown Counsel will make an application for an in-camera hearing at the opening of trial may alleviate many of the victim's apprehensions. Even victims of less serious crimes may desire anonymity. An elderly break-and-enter victim or a single woman would not want her name and address published in the paper. Although a public trial is the general rule, victims may be able to request that their names and addresses not be disclosed.

Victim and witness participation may be difficult for emotional or medical reasons also. The Code does provide a procedure whereby a witness can give evidence 'by commission' where attendance at trial is not possible due to illness, absence from Canada or 'some other good and sufficient cause'. In cases of physical illness where the witness cannot attend trial such a procedure allows the witnesses to give their evidence on commission at their bedside. The evidence is later read in at trial. However, in cases of emotional illness, or for example the inability of a sexual assault victim to confront her attacker without reliving the event, the use of commission evidence has not been determined.

Where children are required as witnesses such factors as intimidation and fear may assume even greater importance. A victim of child abuse will have enough difficulty simply admitting that a parent was responsible for his or her injuries without the added fear of facing strangers in a large courtroom. Alternative procedures for the taking of a child's evidence may reduce the potential trauma which such children may suffer.

A common complaint of many victims and witnesses is the time that elapses between the incident and the trial. Perhaps they cannot even remember what occurred and by this point in time they may not care. A victim, once enthusiastic to see the accused brought to justice and sentenced, may now be apathetic especially if the stolen property has been replaced and damage repaired.

SENTENCING AND THE VICTIM

Where an accused has been convicted of an offence the court may either pass sentence immediately or remand sentencing to a later date. In either case the court will, before passing sentence, hear submissions by the Crown and defence counsel as to what the sentence should be. The sentencing process is open ended in that the court may receive whatever evidence it thinks will be of assistance in determining the appropriate sentence. The Crown or defence counsel may call oral testimony. The judge may request that a pre-sentence report be prepared by a probation officer including such matters as the offender's employment status, home situation and any general observations as to personality or character. Ultimately the sentence imposed is within the discretion of the Judge.

Restitution and compensation are the only sentencing options that may financially benefit the victim. There are three major references in the Criminal Code with respect to compensation and restitution.

Under s. 388(2), a summary conviction court can order the accused to pay up to $50 for willful destruction or damage to property. This amount is in addition to any other punishment which may be imposed, and failure to pay can result in an additional prison sentence of up to two months. The obvious problem with this section is that it only covers cases where the alleged injury does not exceed $50, an amount which is totally inappropriate in terms of to-day's prices and values. Moreover, s. 388 does not apply to theft, but only to damage or destruction of property. Victims of theft, or of damage or destruction of an amount greater than $50 are not covered by this section.

Sections 653, 654 and 655 of the Criminal Code cover the use of restitution as a sentence for an indictable offence. Section 653 provides that where an accused is charged with an indictable offence, the person aggrieved (the victim) may apply at the time of sentencing for an order that the accused pay an amount as satisfaction for loss or damage to property caused as a result of the commission of the crime. If the accused does not pay forthwith, the victim may file the order as a civil judgement with the Superior Court of the province and execute upon it as if it were a civil judgement. The court may also take the amount awarded out of monies found in the possession of the accused at the time of arrest, as long as there is no dispute over the right of ownership or possession of that money. Section 654 confers the same rights to innocent purchasers of stolen property.

Section 655 empowers the court to order that any property obtained by an indictable offence of theft be restored to the victim, so long as the property is before the court at the time of the trial and there is no dispute as to ownership. Exceptions to such orders exist if lawful title has passed to an innocent purchaser, if it is a valuable security which has been paid or discharged in good faith, if it is a negotiable instrument transferred in good faith, or if there is dispute as to the ownership of the property by persons other than the accused. Finally, under s. 616, a restitution order made under any of these sections is suspended until the appeal process has been exhausted, and the court of appeal may vary or annul any such order.

The last major reference to restitution in the Criminal Code relates to probation orders. Under s. 663(2)(e), a probation order may require the offender to:

> "Make restitution or reparation to any person aggrieved or injured by the commission of the offence for the actual loss or damage sustained by that person as a result thereof."

The constitutionality of s. 653 of the Code was determined by the Supreme Court of Canada in R. V. Zelensky. The court held that an order for compensation was within the power of the criminal court as part of the sentencing process but that the court could only make an award for readily ascertainable damages or loss to property. The criminal court is not the proper forum to award damages for pain and suffering or to determine complicated issues of the amount to be awarded.

Similarly, where restitution is ordered as a condition of probation it may only be for actual monetary loss and not for pain and suffering. In addition, before imposing such a condition, the court should be satisfied that the accused has the ability to make such a payment.

Orders for restitution as part of a probation order have been more common than orders made pursuant to s. 653. This is, no doubt, because where restitution is a condition of probation, the probation officer will monitor the payments and default will result in breach of probation. An order made pursuant to s. 653 must be enforced by the victim as a civil judgement. Such enforcement will be inconvenient and time consuming and may be futile where the offender is without assets, or wages upon which to execute.

Although the particular offence may carry minimum or maximum punishments prescribed by the Criminal Code, generally in determining sentence the judge considers the protection of the public, retribution, rehabilitation of the offender and deterrence or prevention of criminal behaviour. The exclusive focus has traditionally been on the offender rather than on the welfare of the victim.

Restitution is theoretically intended to benefit society, the offender, and the victim. Society should benefit in that the purpose of restitution is to protect and affirm social values. In addition restitution may facilitate the prevention of crime and the rehabilitation of the offender, and result in cost savings from a reduction in the use of imprisonment. The offender should benefit by being treated as a responsible person who recognizes the harm caused to society and to the victim, and who is willing to make amends for the harm done. The obvious benefit to the victims is the recognition and satisfaction of their claims for restitution for the loss or damage suffered.

The Law Reform Commission of Canada has supported restitution programmes:

> "Restitution recognizes the damage done to the victim's rights and property and attempts to involve the offender in assuming responsibility for the damage. It encourages the offender to view his conduct in terms of damage done to an individual and not to society and to take constructive action to correct the damage."
> (Working Paper 5 & 6, 1974)

Restitution has two main purposes: to rehabilitate offenders and to provide compensation for victims. Redress for the victim is an important purpose of restitution and should not be considered only as a secondary benefit. Although the victim may sue the offender in civil court for all damages including property loss and pain and suffering, restitution as part of the offender's sentence may be sufficient to restore the actual loss suffered by the victim.

The reluctance of the courts to use the Criminal Code sections authorizing restitution may be due to difficulty in determining the amount of the loss and caution in not exceeding their jurisdiction and stepping into the realm of civil remedies. Another consideration involves enforcement. Where restitution is part of a probation order the sentencing court must have regard to the accused's ability to pay. No such requirement exists for an order made under s. 653. The victim has the burden of enforcing the order by filing it as a civil judgement. The knowledge of problems associated with enforcement of civil orders may dissuade judges from using restitution as a sentencing option.

Clearly, there is little reparative potential for the victim within the present operation of the criminal justice system. Unfortunately, things may be even more discouraging because victims of crime do have a number of responsibilities. For instance, they are required to participate in investigations and trials often at considerable financial and emotional cost and sometimes at the risk of actual intimidation by the accused. This 'double jeopardy' accounts for a great deal of the concern of the victims' movement to reform the criminal justice process so as to assure the safety and welfare of the victim, and ideally, to include formally a concern for the victim within the present decision-making priorities of the courts.

The final frustration for victims who are advised of the sentence is the obvious disparity in sentencing practices. Six months' probation for theft of a stereo may be incomprehensible when a newspaper article reported six months in jail as the sentence in a similar case. Victims may not feel that justice has been done when in their opinion the offender has been dealt with lightly. The fact is, however, that many considerations play a part in the sentencing decision and if victims are not made aware of these considerations it is understandable why their confidence in the system is shaken. No two offences and no two offenders are exactly alike, but where the victims have not been involved in the trial procedure the subtle differences will not be apparent and they will have no idea of the appropriateness of the sentence. Basically, their lack of understanding stems from the fact that they are usually not advised at any stage of the process unless required to attend as witnesses.

The Criminal Law in Canadian Society (Government of Canada, 1982) addresses three concerns of the sentencing process: that there are no policies or principles of sentencing in Canada; that there is disparity in the sentences awarded for similar crimes committed by similar offenders in similar circumstances; and that the effectiveness of current practices is unknown. With respect to policies and principles, statutorily-set maximum prison sentences for certain offences are typically much higher than the actual average sentence awarded. Sentence decisions by appeal courts reveal lack of uniformity and the Supreme Court of Canada does not hear sentencing appeals. In addition, the manner in which parole, remission, temporary absence and mandatory supervision affect sentence is not understood by the public. The third major concern is that little is known about the effects of a given sentence on a given offender or its effects on the level of commission of that crime generally.

Although disparity in sentencing may never be eliminated it should be noted that a number of approaches towards reducing unwarranted disparity are being considered.

CHAPTER 4:

VICTIMS' NEEDS AND EXISTING SERVICES

VICTIMS' NEEDS AND EXISTING SERVICES

Introduction

The Report has focussed on the ability of the criminal justice system to repair the damages caused by criminal victimization, and on the possibility that the treatment of victims by the system may compound the burden of victimization. It has attempted to demonstrate the difficulties faced by victims in their attempt to obtain reparation for the losses they have suffered and on the fact that victims often feel ignored or ill-served by the way the criminal justice system is organized to respond to crime and offenders. The objective, at this point, is to design a strategy for change.

A large number of attempts are already being made, both within the justice system and in the wider area of social services, to respond to the plight of victims. The immediate challenge is to co-ordinate and expand these efforts so as to draw the maximum benefit from the human and financial resources which are being invested in this area. A crucial step in this direction is in the specification of goals and means for the victims' initiative. This brings us to the question of the actual costs of crime, and of the needs and rights of victims.

Confusion results from the fact that needs and rights of victims and the consequences of crime to them are not defined and tend to be used interchangeably. This chapter will attempt to clarify the distinction between the consequences of crime and the needs of victims; it will present the available data on the costs of crime to victims in general and to certain selected special groups of victims; it will discuss and assess some of the services which are already in place for dealing with victims; and finally, it will try to identify the actual needs of victims of crime in Canada. This discussion will pave the way for the reform proposals to be made in Part III of this report.

CONSEQUENCES, NEEDS AND RIGHTS

The needs of victims of crime provide the essential justification for the existence of a victims' initiative, yet 'needs' will mean different things to different people. Fortunately, due to the data which is now available, we are now in a position to make a more practical determination of the actual needs of victims.

There seems to be a consensus that victims of crime have a general desire to be protected from further victimization, to obtain reparation for the losses or damages they have suffered, and to obtain fair and humane treatment from the criminal justice system. This represents an ideal of what constitutes justice for victims, and might best be thought of as the goal of the victims' initiative. In this context, the notion of needs can then be reserved to refer to actual changes in policy, practices or services which may aid in achieving this goal.

The consequences of victimization are always difficult to assess and any attempt at measurement is likely to be controversial. Even so, it would certainly seem that surveys of actual victims are the most effective technique for measuring what these individuals perceive as the physical, emotional and financial costs of criminal victimization or of participation in criminal justice system processes. Thus, the victims' survey, along with the local assessments which are currently being undertaken, should provide us with a useful picture of the costs and consequences of crime.

In this context, the needs of victims of crime can be considered to be the difference between the consequences of their victimization and the present services available to them.

Finally, there is the issue of the rights of victims of crime. A fuller analysis of this question will be presented in a later discussion of proposed legal reforms. For the present, a right is defined as an advantage which compels a related duty or responsibility. This restricts the debate over the rights of victims to those sections of the Criminal Code or of other statutes which discuss the rights and responsibilities of victims, or which impose a duty on accused persons or on representatives of the criminal justice system to deal with victims in a certain manner. It is felt that any other use of the term 'rights' leads to confusion in debate, and to a lack of clear direction for policy making.

THE IMPACT OF VICTIMIZATION

The Victimization Survey conducted by the Solicitor General and Statistics Canada attempted to measure both the direct financial, physical and emotional consequences of victimization, and the indirect or secondary consequences resulting from involvement with the criminal justice system. The present section will discuss the data on the general costs of victimization to all victims of crime. The following section will deal with certain special groups of victims.

The gross financial costs to victims in the seven cities surveyed are rather imposing for a single year: $211 500 000 in unrecovered property and cash; $41 900 000 in damage to property and an additional $7 000 000 in associated medical expenses and lost wages. The victims reported that an additional $170 000 000 was paid out to them through private insurance. Taken together, then these, figures give a total real cost of crime in excess of $431 000 000 in the seven cities for a single year.

Clearly the financial costs of crime are significant. The gross figures, however, may be somewhat misleading. The mean net loss per incident (exclusive of medical expenses and lost wages) came to slightly more than $167. The actual dollar figures should not, however, blind us to the suffering that financial loss can entail. The impact of similar financial loss will be experienced differently depending on the income of victims or their ability to recover through private insurance. Obviously, the financial impact of victimization falls most heavily on those with lower fixed incomes. Lower-income families are less likely to be able to recover their losses and, even if they do make some recovery, the waiting period is likely to produce significant hardship.

The data on the physical consequences of victimization indicate that fewer than 350 000 of the 1 600 000 crimes (22%) involved personal contact with the offender. Nevertheless, these resulted in 50 500 nights in hospital and 405 700 days lost due to some form of incapacitation. About 10% of those who were victims of assault, robbery or sexual assault had to seek some form of medical or dental attention. While serious injury was relatively rare, the costs of victimization again fall more heavily on some than on others. Those who have only basic medical coverage and those who are physically frail and vulnerable will suffer proportionally more. We know also that the victims of some offences are more likely than others to be seriously injured. Victims of sexual assault, in particular, were more likely to be injured and when injured were more likely to require medical attention.

Researchers have only recently begun to collect information on the emotional consequences of victimization. We do know that the fear produced by some forms of victimization can become crippling and can turn victims inward, closing them off from social support when they need it most. We are being made increasingly aware of the insidious and emotionally crippling effects of certain kinds of offences on the victims and their families, both in the short term and long after the offender has been dealt with by the criminal justice system. In addition the victims' emotional suffering may be made more acute by their experiences with the criminal justice system. In the Victimization Survey, about one-quarter of the victims said the victims of their type of crime should have emotional or psychological counselling available to them. This includes victims of property crimes and other offences we generally consider less serious.

Various surveys have also focussed on the consequences of secondary victimization, i.e., the material and emotional costs which result from the victims' contact with the criminal justice system. Victims may feel that the system is insensitive to their suffering and their needs. The victim's experience of powerlessness once a case has passed into the hands of criminal justice system officials has found expression through vocal victim groups. Police and prosecutors appear to make decisions which are not often enough communicated or explained to victims. Few victims understand their role in court, and some may feel intimidated by the setting and the procedures or inconvenienced by the requirements imposed upon them. They may feel affronted that their complaint or accusation has not been taken at face value, or that there are no court officials assigned the task of alleviating their fears or explaining court procedures. Victims often feel not only that they have been denied a service, but that they have been challenged when they are most vulnerable. Finally, few victims know the final disposition of their case, and only in very rare cases do they benefit directly from the disposition made.

SPECIAL VICTIMS

The Victimization Survey and other research provide some information on those groups which are the most vulnerable to the impact of victimization and the least able to find remedies for their problems with the criminal justice system. This section will focus on the situation of these groups of victims of crime.

Elderly Victims

While the elderly are more likely than others to fear crime they are relatively infrequently victimized. While we can only speculate, these apparently contradictory findings may simply reflect the reduced exposure of those elderly people who become 'disengaged' from the normal round of activities of work and family. In this context, we can understand the finding that retired elderly people are the least likely to have been victimized. Solitary, retired, elderly persons seem more able to minimize activities which would expose them to the risk of criminal victimization. The fact that many elderly people do live alone in multiple-dwelling residences and are retired may help account for their low rate of victimization. At the same time, this disengagement may accentuate the suffering and complicate the search for remedies.

The survey results show that elderly people have a comparatively low occurrence of injury. Slightly fewer than 17% of elderly victims of crimes of violence suffered some injury as compared to an injury rate of 29% of younger victims. However, when victims reported suffering some degree of injury, those 65 and over were more likely to require medical or dental treatment than any other age group. The average reported material loss for elderly people was also higher than the mean loss. Thus, although elderly people were victimized less often than younger people, the impact of their victimization was greater. Economic loss is proportionally more serious for elderly people in that they generally have reduced incomes. Indeed many, because of their frailty or low incomes, are dependant on others for support. Obviously when they are victimized at the hands of these others, they will often be unable to seek help or even make their victimization known.

Children as Victims

The particular vulnerability of children reflects their lack of physical strength, and their social and physical dependance. In the past decade the public has become increasingly aware of the special vulnerability of children to neglect, to physical, sexual and emotional abuse, and of the exploitation of children in the production of pornography. This awareness and concern has been addressed to some extent by legislative and administrative initiatives in almost every jurisdiction in Canada to encourage or require citizens and professionals to report suspected cases of abuse to child protection authorities, and to require such authorities to provide central registries to identify, evaluate and monitor victims of abuse and suspected offenders in the community. Whether an actual increase in incidence is occurring is problematic, but there has been an increase in the number of cases reported.

Because child abuse most often occurs within the family setting, identification of cases is difficult, and the consequences of intervention are sometimes as traumatic and damaging as is the original abuse. In the case of physical assault, the victim is usually a male child, and the offender is usually the victim's mother. Child victims of sexual assault are predominantly pre-adolescent girls, and the offender is most likely to be the victim's father or stepfather. Abuse of both kinds tends to be ongoing rather than limited to a particular occasion, and frequently more than one child in the family has been victimized. What this may mean is that children who are abused less frequently, or only episodically, are far less likely to come to the attention of welfare officials than are chronic victims of sexual or physical abuse.

Although it is probably true that increased societal intervention in cases of abuse has been beneficial to the best interests of children in general, it is not always the case that the best interests of individual children are assured in the process. Abused children may be in a special double-jeopardy situation, suffering from primary victimization when neglected, and from a kind of 'secondary' victimization as a result of societal intervention in the lives of their families. Special mechanisms are needed to enable children to invoke intervention on their own behalf, to place their evidence and their needs before the courts in an effective way, and to protect them from manipulation and from trauma or humiliation if they must appear as complainants and witnesses. Urgent consideration must be given to alternative processes and procedures which will guarantee the dignity and integrity of child victims and witnesses.

Assaulted Wives

One can only guess at the numbers of wives who have been assaulted by spouses or ex-spouses. Just as these victims have often been 'invisible' to the criminal justice system, they have been 'invisible' to social researchers. It has been estimated that about one in ten wives are likely to experience assault at the hands of their spouses. Some put their estimates even higher. Whatever the frequency of the offence may prove to be, the fact is that wife assault is intolerable in any society which calls itself civilized.

The Victimization Survey is likely to underestimate the incidence to the extent that the interviewed women themselves do not define the assault as criminal. According to the survey data, the rate of assault for women is approximately half that of men (39 per 1 000 as compared to 79 per 1 000), but in 10% of the incidents experienced by women the offender was a spouse or ex-spouse, and in a further 10% the offender was another relative or friend. Whatever the 'true' annual or lifetime rate of domestic violence in our communities there can be no doubt that these victims merit our very serious concern - particularly in view of the fact that for many victims, such assaults are chronic, rather than occasional occurrences. Almost one-quarter of the violent incidents between spouses or ex-spouses (sexual assaults, assaults and robbery) were so-called 'series' crimes. Interestingly, no one reported two, three or four spousal incidents - it was either one incident during the previous calendar year, or a series.

Victims of wife assault are afraid of reprisals and embarrassed about their plight, so many choose to remain invisible. The cyclical nature of the violence also leads many of its victims to believe that it will not recur. This hope, often combined with economic dependence, means that victims often seek to solve or cope with their problems without outside help.

The problem also presents difficulties for those who work in the criminal justice system. Many police officers and prosecutors have been cautious in pressing forward with such cases, in part because of the reluctance of the police to enter a home when the parties appear to have calmed down, and in part because of their past experience that the victims are often reluctant to testify in court. Unfortunately, the awareness of the importance and consequences of wife assault has been slow to develop.

Even with only rudimentary empirical knowledge about this offence, one can conclude that wife assault produces, beyond the obvious physical damage (which can be quite severe), long-term emotional damage which seriously diminishes the lives of those victimized. More thorough law enforcement in itself may not be the whole answer, nor will harsher treatment of the offender necessarily lead battered wives to report incidents to police or seek help elsewhere. Victims' services must not be restricted to dealing with the immediate physical and material needs and long-term emotional needs of the victims of family violence. They must also address the needs of the children exposed to such violence, and of the offenders in these situations.

Sexual Assault Victims

In the Victimization Survey, incidents were classified as sexual assaults only if a physical attack occurred which the victims described as including rape, attempted rape or sexual molestation. Verbal threats of rape or other forms of (non-physical) sexual harassment were not included in this category of incidents. Although sexual assaults, as defined, were reported to be relatively rare, they undoubtedly had the most serious consequences for victims, whether seriousness was measured in terms of physical injuries or long-term emotional effects.

Women are likely to fight back when attacked sexually and when they do so, they are likely to be injured by the attackers, sometimes seriously. Moreover, victims of rape and other serious sexual assaults may experience a range of intense psychological and emotional reactions including complete loss of control, intense fear, and psychological crisis reactions such as hysteria or paralysis. This is often followed by feelings of helplessness, guilt and shame, withdrawal from social contacts, and a decrease in self-esteem. Involvement with criminal justice system officials may accentuate those effects particularly if the officials are insensitive to these crisis reactions. Even long after the incident, victims may experience avoidance behaviour, anxiety, depression and suspicion toward others. Sexual assault victims are more likely than any others to agree that counselling services should be available for all victims of this type of crime.

Over 70% of the sexual assault victims felt unsafe walking alone at night, (compared to 54% of the women who had not been victimized in the past year). More sexual assault victims felt unsafe at night than any other victims. These victims face the same problems as assaulted wives in terms of self-denigration, emotional damage and disrupted relationships. The similarity of the cycle of perpetual abuse is most apparent for the significant minority of women who are sexually assaulted by intimates (spouses, ex-spouses, relatives or friends). But for all victims of sexual assaults, traditional sources of support within the family may be unavailable to them, or inadequate to their needs.

Only about one in three female victims of sexual assault report their victimization to the police. Fear of revenge by offenders (35%), and concern about the attitude of the public and the courts to this type of crime (47%) figure significantly in their failure to invoke police action. When they did report incidents to the police, sexual assault victims were less satisfied with police performance on all measures used than any other groups of victims: 25% gave the police a 'poor' rating on promptness of response and on courtesy, 50% of the sexual assault victims who reported the incident said police did a poor job in keeping them informed on the progress of their case; and 37% gave them a poor rating in 'overall case handling'. The secondary consequences of sexual assault would thus seem to be very high.

Break-and-Enter-Victims

More than 227 000 break-and-entry incidents occurred in the cities surveyed. In fact this figure necessarily underestimates the incidence of break-and-enter because it only includes those incidents which did not lead to some more serious offence. For example, break-and-enters which result in assaults against the resident are recorded as assaults, and are therefore not included in the following discussion.

Of the very large number of households affected by break-and-enter (93.8 per thousand households) about 67% suffer some financial loss. In those incidents where some loss did occur, the average gross loss (through theft or damage) was about $1 142. After recovery through police and private insurance, the net loss for victims was $655 with most of the difference being accounted for by private insurance. When stolen goods are found they may be held by the police as evidence for pending trials, exacerbating the sense of loss and leading to further feelings of frustration. Victims of break-and-enter may experience crisis reactions which we generally assume to arise only with more violent crimes. Often these reactions will occur some time after the incident. The violation of the home seems often to produce feelings of anger, fear, and surprise. If vandalism occurs as well, the perceived irrationality of such behaviour aggravates such reaction. Again criminal justice officials are sometimes unaware of, and therefore insensitive to, such reactions.

Rural Victims

There is an unfortunate but pervasive urban bias in our understanding of crime and the consequences of crime for victims, but there is no reason to suspect that the impact on rural victims is in any way less serious. (It should be noted that the Victimization Survey related only to urban victims.)

The trauma associated with being a victim of crime is clearly not restricted to any particular group, category or social class. Consequently, the 'rural' victim, not unlike the 'urban' victim, cites the need for: help in dealing with the feelings experienced immediately after the crime; someone to talk to after the investigating officer has departed; and someone to stay with after the incident to provide security and protection.

Research suggests that the primary source of assistance in dealing with the problems and needs arising out of the victimization experience was the individual victim's personal support system. Less than 3% of the victims reported contacting any community service or social agency, excluding the hospital and police (Stuching, 1983). However, it would be a serious error to assume that the network of informal relationships among rural neighbours, in themselves, can meet the complex needs of victims. One should in any case be uneasy about relying upon such sources of support and protection for victims of violent personal crimes, especially those which involve non-strangers. The plight of the rural victim of sexual assault, child abuse (either physical or sexual) or spousal violence is even more serious than that of similar victims in urban settings since the options for these victims are seriously limited. Financial dependence, physical isolation, lack of access to legal advice or social agencies, and an almost total absence of 'safe' (transition) houses may well conspire to keep rural victims of violent offences silent, and to make them vulnerable to recurrent victimization. A great deal of ingenuity and commitment will be required to develop service delivery models and techniques capable of providing effective and continuous services and programmes to victims in small, often scattered and isolated populations.

Native Victims

There is as yet little information available in Canada on native victims. Some American research studies indicate that: victimization rates are disproportionately high on reserves; natives are more likely than non-natives to suffer from assaults, homicides and all kinds of family violence; and, that these incidents are often alcohol-related. It may well be that these findings reflect the Canadian situation as well. Two studies prepared for the Department of Justice, Canada, (Green, Susan: Victims' Needs Assessment Study in the Northwest Territories, 1983; and McLaughlin, Audrey: An Analysis of Victim/Witness Needs in the Yukon, 1983) shed a little light on an otherwise dark area. These authors suggest that the greatest need for services for victims of crime in the Northwest Territories and the Yukon appears to be in the area of domestic violence, particularly with respect to battered women.

At present, statistics on the actual number of women who are physically abused by their partners is not available. However, officials from social service agencies in the Northwest Territories and the Yukon view the problem of spouse abuse as acute and stress the importance of establishing transition houses with satellite homes to assist women. It can be argued that for rural native women, the situation may be even more difficult than for 'urban' women. Making a decision to leave the abusive situation means not only leaving home, but leaving the community as well. Outside of Whitehorse and Yellowknife, there are no transition homes in the territories. Furthermore, there may be a great deal of pressure from the woman's extended family to accept the situation. To further compound the issue, there are very limited educational and employment opportunities which would assist her to opt for independence.

Spouse abuse victims are but one sub-group of native victims/witnesses that require an adequate level of service from the criminal justice system and from other community support networks. Research suggests that native victims generally see the court process as "intimidating, incomprehensible, and providing little support for Indian people" (McLaughlin, Audrey: 1983). This could possibly be explained by the fundamentally different definitions of crime and justice, cultural differences, and a history of 'white man's law'. Nevertheless, natives require more information about the court process and criminal justice system in general.

Although there are no services which have a specific mandate to deal with native victim of crime, there are a number of agencies which offer assistance to victims of crime under their generalized mandate. Green (1983) identified seven agencies in the surrounding communities which have facilities which native victims could benefit from. Similarly, McLaughlin (1983), in a somewhat more comprehensive report, cited twenty-three agencies in the Yukon which could assist victims of crime. The fact is that very little is known about native victimization and further study in this area is required to be done.

Victims of Traffic Offences

The concern for traffic victims (whether the accident was caused by an offence or not) preceded the concern for victims of other crimes. In fact, the compensation received by traffic victims seems to be higher and certainly more widespread than that available to other victims. Most provinces had an Unsatisfied Judgement Fund for motor vehicle accidents long before they had a Criminal Injuries Compensation programme. In the past 10 years, most provinces have been plugging gaps in their coverage, and simplifying the process. To give an example, Manitoba has abolished the necessity of going to court, obtaining a judgement against an uninsured driver, and then making a claim to the Unsatisfied Judgement Fund. It is now sufficient to make a regular claim, and the government-legislated insurance programme will pay if the driver has been insured for $100 000 for personal injury. The complications of going to court and even the complications of identifying the driver are eliminated.

More recently, in part through the efforts of groups such as Mothers Against Drunken Driving (MADD), Parents to Reduce Impaired Driving Everywhere (PRIDE) and Citizens Against Impaired Driving (CAID), certain traffic offences are increasingly being viewed more seriously. Traditionally, the approach to driving while impaired has de-emphasized the punitive in favour of victim-centred response and prevention measures. Victims and families of victims have increasingly voiced their dissatisfaction with the traditional response.

Certainly the numbers of victims of traffic offences make them a significant category. In 1980 there were

5 132 traffic-related deaths in Canada, over 10 times the number of first- and second-degree murders committed in the same year. A further 233 299 people were injured as a result of traffic accidents. Again, this is significantly more than were injured through crimes of violence. In addition to the accidents which resulted in death or injury, a further 671 385 accidents resulted in property damage of at least $200 each.

Best estimates lead to the conclusion that about one-half of these accidents were the result of a traffic offence. Recent research has demonstrated that impaired drivers are 14 times as likely to be killed on the road as non-impaired drivers, indicating that much traffic victimization is preventable. No doubt the number and general distribution of traffic victimizations and compulsory insurance accounts for the relatively advanced state of financial services to victims in this area.

Families of Victims of Violence

The intense emotional and financial impact which follows on the violent death of family members who are victims of crime merits special attention by the criminal justice system. Families of such victims should be considered as victims in their own right - albeit secondary victims who are at one remove from the actual events.

Although victim deaths are relatively rare, general procedures and practices for dealing with close relatives should be developed and adopted by officials and volunteers throughout the country, and should include the provision of emergency financial and/or transportation assistance, direct information sharing concerning case progress, and the provision of general emotional support or therapeutic counselling when necessary.

THE NEEDS OF VICTIMS OF CRIME IN CANADA

As mentioned earlier the needs of victims of crime refer to those consequences of victimization which are not being dealt with through the practices of the justice or social services systems. The benefit of this approach is that it allows us to identify what remains to be done to satisfy the goals of the justice for victims of crime initiative. The purpose of this section is to attempt to present a more precise definition of the actual needs of victims of crime in Canada at this point in time.

Overall there would seem to be four broad types of needs. A discussion of these needs is summarized in the diagram below which attempts to specify the major responses to the consequences of victimization, and to identify the subsequent needs of victims. Obviously some of the responses can deal with more than one specific type of consequence or injury, but the diagram deals with each response in terms of its primary impact.

CONSEQUENCES OF VICTIMIZATION	CURRENT PRIMARY RESPONSES	GAPS OR BENEFICIARIES IN RESPONSES (NEEDS)
1. PHYSICAL INJURY	state medical insurance	-limits or exclusions may discriminate against victims -inconsistent service to rape victims
2. FINANCIAL INJURY OR PROPERTY DAMAGE	a) private insurance	coverage not universal
	b) civil justice system	little actual reparation is obtained
	c) criminal justice system	reparative sentencing does not result in a significant degree of reparation
	d) criminal injuries compensation	little impact due to low funding and public awareness
3. EMOTIONAL INJURY	services to victims of crime	lack of resources results in limited access to these services
4. SECONDARY INJURY	police and court services to victims and witnesses	such services are only beginning to emerge, and few are fully established

Needs Resulting from Physical Injury

The Canadian health care system adequately insures victims against most of the physical costs of victimization. Nevertheless, there are certain limits and exclusions built into every plan which may have the unintended consequence of discriminating against victims of crime. For example, some provinces are considering the adoption of user fees for hospital patients, or allowing doctors to engage in extra billing of patients for the services they provide. In either case, such practices can potentially affect many victims, and will obviously have their greatest impact on the most vulnerable economically.

Victims can attempt to recover these costs by civil suits, reparative criminal sentences, or criminal injuries compensation schemes. However, these options provide only limited remedies for the physical injury to the victim.

Certain medical practices can also be problematic. For instance, many victims of sexual assault find it difficult to receive the kinds of physical and legal treatment they require when they present themselves to hospital emergency wards. While there have been improvements in this area, there is reluctance on the part of some medical staff to become involved in the legal technicalities of the evidentiary requirements of sexual assault. Overall, then, it would seem that there are certain physical costs of crime which are not currently being remedied.

Needs Resulting from Financial Loss or Property Damage

The Canadian justice system is much less able to deal successfully with the financial losses to victims of crime. Those victims who do obtain satisfaction generally do so through participation in private insurance schemes. However, not everyone can afford such coverage. Moreover, there are many forms of property which have an emotional or sentimental significance and which cannot be replaced for any amount of money. Victims of crime can also make use of the civil law process to obtain reparation for their losses. However, this is of limited value for most victims because it is difficult to identify and bring to justice the offender in question. Even assuming this can be done, there is still no guarantee that the accused will be found legally responsible, or will be willing and able to make reparation for the harm done.

Nor does the victim generally find satisfaction within the criminal law process. Little use is made of reparative sanctions; the focus of sentencing is on the needs of society, and the sanction chosen usually reflects the court's assessment of the fairest and most effective way to make the offender bend to those needs. The sentencing process is not designed to give priority to the wishes or desires of victims.

Finally, some financial reparation can be obtained through criminal injuries compensation schemes. However, these programmes are limited mostly to victims of violent crime. Moreover, they are underfunded by the jurisdictions which operate them, and almost unknown to the vast majority of the Canadian public. Overall, then, a number of changes are required in both the legal system and in government policy and practice before any significant improvements can be expected in this area.

Needs Arising From Emotional Injury

One of the more promising trends in recent years is the emergence of a network of social services designed to meet the emotional needs of victims. The prototype of such service groups was the sexual assault centre which emerged over the last two decades. These centres provide information, guidance and support to victims of sexual assault. Similarly service groups are available for assaulted women and for a few other types of victims. The long-term benefits to victims of crime of immediate crisis counselling and support have been well documented and the value of such service cannot be overstated. It is, of course, important to recognize that when services of this kind are provided they must be delivered in such a way that the integrity of the victim's evidence will not be adversely affected.

The major problem faced by service groups of this kind is the difficulty of guaranteeing an adequate level of financial support. They are too often forced to go from one budgetary crisis to the next. This situation is demoralizing, and leaves these groups vulnerable to the vagaries of public opinion (as reflected in donations) and the cost-cutting realities of an era of fiscal restraint. Until there is some formal recognition of the value of such services, and a corollary decision to guarantee a higher level of priority to the support of these services, there is little reason to expect much improvement in this area. Obviously, the impact of this will be proportionately greater for the most vulnerable victims of crime.

Needs Resulting from Secondary Victimization

The willingness of the criminal justice system to acknowledge the impact of their current practices is very promising. A great many police forces have already initiated programmes which are aimed at improving the quality of their service to victims and witnesses and others are planning to do so. The rate of development of services at the prosecutorial and court level has been slower, perhaps in part because of an expressed concern that services must be delivered in a manner which guards against interference with the evidence of potential witnesses.

Another problem is that there is so much to be done that the very enormity of the task can be intimidating. Moreover, the extra costs and labour required for such programmes, at least at the implementation stage, can be a disincentive, and it would appear that victims and witnesses are likely to be required to carry certain costs as a result of their participation in the criminal justice system.

INFORMATION NEEDS

Almost every study made of victims of crime highlights the fact that victims place the need for information as their highest priority. What happens now? Who will tell me what to do? Will I have to go to court? What will happen at the court and what do I have to say? When will I get my property back? - these and many other questions are common to those working in the system. They should be dealt with patiently and thoroughly, given the emotional experience accompanying victimization, the complexities of the legal system and the desire to see that justice is done.

The system itself has information needs and these are dealt with later in the report but it would be logical to assume, in the light of what we have learned, that if the victims' needs are better satisfied, then the system will be perceived by them to be relevant and purposeful and its efficiency may thereby be improved. Victims will have a better understanding of what is expected of them and the reasons for those expectations. The more important information needs of victims fall into these categories:

- A need for information on matters specific to the case in which they are involved. Among other things this would include a need for information related to charges, hearings, adjournments, disposition of the case and the return of stolen property. Access to this information is important to reduce the victims' fears and to help them cope with some realities of the process. For example, a person charged with assault could well be back in the victim's neighbourhood shortly after a bail hearing. To help the victim to adjust to that reality it is important for the victim to know that bail has been granted.

- A need for basic introductory information on the relevant substantive law, the criminal justice process and the roles of such key players as the victim, witness, accused, police, prosecutor, judge, etc. This will serve to orient victims to the process and to their experience within it.

- A need to be aware of any services provided locally to assist victims, the focus of the service, its location, the hours during which assistance is provided and so on. Services in this context are not limited of course to those provided within the justice system but would include social services such as transition houses, sexual assault centres, etc., health services - particularly those offering counselling or emergency assistance - and businesses which provide lock and key repairs.

- A need for a central agency which can collect material on victims and disseminate it to all jurisdictions; it would be helpful, in addition, if such an agency would be staffed with people experienced in the field who could act as consultants to those wishing to initiate programmes for victims.

EXISTING SERVICES

What the Report has said so far on the consequences of victimization is not intended to imply that nothing is being done for victims of crime. We have already established that the Canadian system of medical insurance provides protection against the direct physical consequences of criminal injury. Moreover, victims have at least a limited potential for recovering their financial losses through civil suits, reparative criminal sentences or criminal injuries compensation schemes. The shortcomings of each of these options are significant. Nevertheless, these programmes and policies are in place and can be improved.

There has also been a recent trend towards providing services to victims of crime to assist them in overcoming the emotional and secondary consequences of victimization. The first such services were generally directed to dealing with the needs of special groups of victims, and focussed primarily on victims of sexual assault or child abuse. More recently, police forces, court systems and private agencies have become involved in this area, largely by attempting to provide information, assistance and support to victims or witnesses of crime.

The purpose of this section is to discuss the present services available to victims of crime in Canada. These services are not described in any great detail since there are already two excellent surveys in this area, and the interested reader can more profitably refer to these for further information (Norquay, Geoff and Weiler,Richard: Services to Victims and Witnesses of Crime in Canada, Solicitor General Canada, 1981; DeGagne, Jean-Guy; Weiler, Richard, and Poupart, Lise: The Victim Services Survey, Canadian Council on Social Development, 1983).

The focus of the section is on three major questions: what are the goals or objectives of providing services to victims of crime? who should provide these services? how should these services be delivered to victims?

The Objectives of Services to Victims

Every needs-assessment study has illustrated the confusion and bewilderment of victims in the face of their involvement with the criminal justice system, and has detailed their lack of awareness of some of the programmes and services which are available to help them deal with the consequences of victimization. When available these different services to victims are a response to this expressed desire for information and support. There are differences in the specific goals or emphases of individual programmes. However, there seems to be a consensus that services to victims or witnesses of crime have five major objectives.

- To provide victims and witnesses with information on the case in which they are involved, and on their rights and responsibilities within the criminal justice process.

  There has been a trend towards providing victims and witnesses with information on the court setting and legal procedures, and with some degree of support during their involvement with the system. This initiative seems to reflect a widespread conviction that such services can meet the requirements of these individuals while accommodating the effectiveness and efficiency concerns of the system.

- To assist victims in dealing with the consequences of victimization, and in coping with the aftermath of crime.

  A wide range of activities can be included under this heading. On a general level, it can involve such services as providing a locksmith to secure one's residence after a break-in, furnishing short-term emotional support to aid the victim in dealing with the immediate crisis of victimization, or assisting the victim through the complexities of filing insurance or compensation claims. This type of service is even more important to certain special groups of victims. Rape crisis centres have provided victims of sexual assault with the help and support they need to deal with the physical and emotional trauma which so often accompanies such attacks. Agencies dealing with battered women provide emergency accommodation in 'safe houses' and some degree of support to help the victim escape from a desperate situation. Actually, such specialized agencies preceded the development of more general services to victims, and have served as a model for program development.

- To provide crisis intervention services.

A number of agencies are moving towards the development of services for helping people deal with crisis situations. The concern is usually to provide trained intervenors who are prepared to assist emotionally or physically abused women or children, and to thereby contribute to alleviating the suffering caused by violence in the family.

- To sensitize workers within the criminal justice system to the situation of victims, and to train those workers to recognize and respond to the needs of victims and witnesses.

  A great deal of attention is paid to the importance of changing the attitudes and motivation of the people who deal with victims and witnesses of crime. In many ways, this is the key step to an improved situation for victims. Most programs recognize that training police and court workers to consider their 'clients' can result in significant benefits for victims, witnesses and the system at relatively little additional cost.

- To co-ordinate victim-based efforts, and to assure that victims are aware of the services which are available to them.

  The co-ordination objective essentially involves the provision of information to both victims and criminal justice workers. In the former case, an attempt is made to assure that victims are aware of available services, such as criminal injuries compensation or special support agencies or networks. This can involve programmes of general public education as well as direct contact with victims. In the latter case, the goal is to ensure that the existing service system is prepared to accommodate and serve victims, and that justice system workers are able to refer victims to the appropriate agencies and services. There is considerable evidence of a commitment on the part of organizations concerned with victims in the co-ordination of their efforts.

Unfortunately, the consensus over objectives has not resulted in a widespread expansion of these services. The recent survey by the Canadian Council on Social Development (1983) suggests that the limited growth in this area is a result of a number of factors. Some jurisdictions have yet to clarify the extent of need for such services, or the appropriate auspices for delivering them. Hopefully, the rapid publication of the needs assessment studies undertaken by the Department of Justice which have now been completed, and which reveal a great deal of consistency in the needs which have been identified, will speed developments in this area. A more important consideration would seem to be the realities of fiscal restraint. It is interesting to note that services tend to be introduced or developed largely on the basis of redirecting existing resources: there is little political support for initiatives which require massive investments of new resources. The Report will deal with the further implications of financial or political constraints in its discussion of the responsibility for providing such services and of the models of service delivery.

The Responsibility for Providing Services

The CCSD survey indicates that there is a great deal of controversy over which components of the justice system should provide services to victims, and over the range of services which should be provided. In large part, this reflects considerable differences of opinion as to the appropriate role of criminal justice agencies in relation to victims. While sensitive to the situation of victims, many practitioners are concerned that victim assistance may compromise the ability of the system to satisfy the needs of society and to guarantee the rights of the accused. The practical result of such concerns is a debate over the most appropriate manner for allocating the responsibility for such services. Some argue that the criminal justice system should fulfill this responsibility, while others insist that such work is better done by private social service agencies such as the Salvation Army, the John Howard Society, etc.

There is also a concern within both public and private agencies on the appropriateness of being involved with offenders while also dealing with victims. There is a sense that this may well represent a potential conflict of interest, especially to the extent that the services involve some form of victims' advocacy. This is compounded in the voluntary or private sector by the issue of the priority of services to victims, and the question of the specific role these agencies should play and the specific services they should provide. The problem is well illustrated by the difference of opinion regarding the extent of services which should be provided by sexual assault centres. For example, it is not clear whether sexually abused children can best be served by general child welfare agencies or by specialized sexual assault centres. Nor is it clear who can best provide crisis intervention, information or support to sexually abused adults. There is also considerable disagreement between sexual assault centres and provincial authorities over the political stances and advocacy actions of some such centres. There is little reason to believe that there will be an early or easy resolution of these questions. However, some encouragement can be taken from the interest most agencies have expressed in exploring possibilities for greater co-operation and co-ordination in the provision of services to victims.

The Organization and Delivery of Services

The CSSD Survey found that there is a great deal of support for providing services to victims and witnesses within the framework of existing programmes and services, or by redeploying existing resources to deal with new responsibilities. This is accompanied by an increasing reluctance to adopt the 'special project' approach, largely because of a resistance to sharing the costs of these programmes or a reluctance to becoming involved in programmes which require major or sustained injections of new resources.

In practical terms, this has meant that services are either provided directly by agencies within the justice system, or indirectly by contracting the task out to the private social service network. In the former case, the services can be based in police departments, in the court system, in correctional agencies or in some combination of the three.

There are three approaches to a police-based system of providing services. The first is to create a specialized services unit within the police force to deal with the requirements of victims. This approach has been adopted by the police forces in Edmonton, Calgary and Kitchener-Waterloo. The second approach is to blend the victim services unit within an existing service or division of the police force. St. John and Regina are developing proposals based on this strategy. The third approach is to attempt to reorganize existing resources so that a police department can maximize the return on current resources. The city of Vancouver and the R.C.M.P. are perhaps the best examples of proposals for operationalizing such an initiative. As an illustration, the CCSD survey indicates a high level of recognition on the part of most R.C.M.P. detachments of the importance of victims' services as an inherent element of a police officer's responsibilities.

Moreover, the majority of detachments indicate that they provide services to victims and witnesses, especially in the area of linking the victim or witness to the legal system. Unfortunately, this commitment does not seem to be accompanied by a plan to develop services or by a participation in community-based planning or inter-agency co-ordination.

Court-based services are generally concerned primarily with the welfare and requirements of witnesses, and with the objective of improving the court process. This could involve an improved case management system such as the one being developed in British Columbia, or the provision of improved services to witnesses (e.g., transportation, babysitting). In either case, the product generally springs from the belief that such services will result in faster and more efficient justice by assuring the participation of more co-operative witnesses.

The final strategy is the combined victims/witnesses services approach, which directs the police to an emphasis on victims and the court-based unit to assisting witnesses. The only fully operational unit of this type is based in Winnipeg, where the victim and witness components were developed concurrently under a single advisory committee. It is too early to assess conclusively the potential advantages of this two-tiered approach, but it does seem to maximize the potential for rationalizing scarce resources in this area.

A number of programmes have also been developed within the volunteer social services network, by agencies such as the Salvation Army or the John Howard Society. Such programmes can best be distinguished on the basis of their targeted population. Some are designed for victims and witnesses in general and offer a broad range of services. The programmes offered by the Salvation Army in Ottawa, and by the John Howard Society in Lethbridge are examples of this. Others offer services to specific populations such as victims of family violence or sexual assault. The Restigouche Family Crisis Intervenors Program is an example of this type of service. Transition homes and rape crisis centres also generally use this approach.

In spite of this activity, we must conclude on a somewhat pessimistic note.

The CSSD survey discovered no substantial development of such services or projects over the last two years. A number of existing projects have either been terminated or given diminished levels of support, and some previously planned programmes have not been implemented. This appears to reflect a lack of resources more than anything else, although there is also some debate over the emphasis of proposed services or the appropriateness of the organizations requesting support. In sum, these various demonstration projects hold great promise for the future. However, it would appear that many jurisdictions are unwilling or unable to assume the financial burden of these projects once the federal government's demonstration grant funding is exhausted. Police and court-based programmes which can demonstrate their cost efficiency seem to be the best protected from such cutbacks. For the most part, however, it seems clear that fiscal restraint presents a significant hurdle for the victims' initiative to overcome. The contributions of existing programmes only serve to highlight the fact that most jurisdictions have done relatively little in this area. We can only hope that the lessons gained through existing programmes and demonstration projects will speed development.

Some examples of different forms of service to victims are described in Appendix I of the Report.

PART III

IMPROVING THE SITUATION OF CRIME VICTIMS

CHAPTER 5:

PROPOSALS FOR CHANGE

PROPOSALS FOR CHANGE

Introduction

In attempting to describe the situation of victims of crime, the Report has so far considered three broad aspects: the legal context within which our society responds to victimization incidents; the criminal justice system's practices and how they affect victims; and the various services which currently offer support and assistance to victims. In all three areas, difficulties were identified which contribute to the problems experienced by victims of crime in our society.

Once these difficulties had been identified the Task Force considered a number of alternatives for change or reform, their relative merit, and their potential impact both upon victims of crime and upon the criminal justice systems. In many cases, however, very little information was available on the merit and impact of a particular proposal for change. Often proposals had either not been implemented in Canada or had been implemented only for such a short period of time that the value of the proposed change was hard to assess. Whenever possible, similar experiences in other countries were drawn upon. Again it was found that developments were of recent origin. This, added to the fact that they had been implemented in contexts which widely varied from our own, made evaluation of them impossible.

No attempt is made to present a discussion of the relative merits of all the proposals for change which were considered. The Report limits itself to those proposals which, after careful consideration, appear to hold promise in terms of ensuring greater justice to victims of crime without damaging the integrity of the criminal justice system.

To be consistent with the format already used, these proposals for reform will be grouped under four separate headings: those involving changes to current practices; those which improve existing services; those relating to information needs; and those requiring legislative reform.

The final chapter of Part III focuses upon the costs and funding of implementing programmes which are designed to improve the situation of victims. It was extremely difficult to obtain accurate figures on costs because many programmes are of such recent origin that exact costs are not available. Cost estimates for some projects have been provided (see Appendix II) in order to indicate the range of expenditures involved.

Part III closes with comments upon the funding of such programmes. Clearly there is a limit to the extent to which sub-systems in justice can rearrange their priorities and take funds from one activity to fund another. It is difficult to achieve reductions in expenditures on items which are absolutely essential to the operation of the system in order to fund new initiatives. The difficulty is heightened because the system is the target of increasing demands, is labour intensive, is subject to constraints and in the opinion of some is insufficiently funded. However, some of the practices and services described in Part III can be improved or developed at relatively little cost. Proposals are made in regard to the possible sources of funding for those services which will require substantially more resources.

PRACTICES

The mandate of the justice system to protect society and to deal with the offender, and the limited financial and human resources assigned to this task, have sometimes resulted in practices which neglect the needs of victims of crime. In this context, we face the question of how we can improve the ability of the system to respond to victims without compromising the basic aims of the criminal justice system, and hopefully, without creating new bureaucracies. We believe this can be done and this chapter will focus on possible reforms in several areas of practice.

RETURN OF PROPERTY

The police or the courts are legally required to hold or seize certain items as part of an investigation or trial. While this is an obvious legal necessity, it can result in a form of secondary cost to victims who are required to bear a financial or emotional burden while their property is out of their control. Clearly, this is not the same as theft or damage to property as these are defined in the Criminal Code. Nevertheless, from the point of view of the victim, the consequences are much the same: there is a victimization resulting from the temporary loss of the ability to control or use one's own property, or from the frustration and costs involved in the eventual return of that property. The concern of this section is with the question of whether the police and the courts can be more responsive to victims in this area.

In the last few years, a number of jurisdictions have experimented with innovative forms of property control. Perhaps the best known example is the programme instituted by the Edmonton police in an attempt to allow victims to reclaim their property for use more promptly than is possible under traditional schemes and which is described in Appendix I. This and similar programmes which have been initiated in some other areas should be emulated throughout Canada.

One obstacle to a large-scale increase in the use of such innovative forms of property release is the absence of a policy outlining when photographs are acceptable to the courts as evidence. Clearly, the 'best evidence rule' does not completely preclude the use of photographs. Such forms of evidence are routinely used in the case of motor vehicle accidents, or when it would be physically impossible to bring the property to court (as in the case of perishable goods, or of a very large item such as a boat or truck). However, in the absence of a clearly articulated set of legal principles governing the use of photographic evidence, it is unlikely that Crown Counsel and judges feel they have the freedom to modify the rules for assuring continuity of possession of property except in the most obvious of cases. Previous experience and personal preference will continue to be the basis of the decisions they make. At present, it would seem that the law has been slow to design procedures which can adapt currently available technologies to the requirements of the criminal justice system and to the needs of victims of property loss.

A sizeable percentage of the property which is actually recovered by the police, excepting automobiles and bicycles, is obtained following the sale of the property to pawnbrokers. At present, daily contacts with pawnbrokers are maintained by the police to ensure the prompt recovery by them of property reported to be stolen. It is common practice for victims, whether they be individuals or insurance companies with subrogated rights, to be asked to pay pawnbrokers the loan or ticket price which pawnbrokers have paid out as innocent third-party purchasers. To demand that victims repay pawnbrokers for their ticket disbursements in order to obtain the property would appear to be inequitable since the pawnbroker should attempt to obtain this from the accused. While it is acknowledged that in these cases pawnbrokers are innocent third parties, so too was the primary victim innocent. It can be argued that the risk or inconvenience to the pawnbroker is part of 'the costs of doing business'.

The situation is not made any easier when the police withhold stolen property from victims of theft (when it has been recovered from pawnbrokers) until the ticket price has been paid. Again we acknowledge that close relations must be maintained between the police and pawnbrokers and the situation admits of no easy solution. The police are caught in the middle and one can sympathize with them, particularly when victims are angry and frustrated because they feel that this practice is unjust; indeed there is no legal basis for the practice.

Insurance companies, like pawnbrokers, must maintain close working relationships with the police on whom they rely to provide reports on the theft, the nature of the goods stolen and their approximate value. They rely on the police to inform them regarding the recovery of stolen goods in which they have a subrogated interest and the dates and times of trial regarding property in which they have an interest.

Often insurance companies are themselves victims; for example, of inflated and fraudulent claims. They are thus in a good position to sympathize with their clients who are victims of theft, but some of them could do more than they are now doing to assist those clients. In one police force alone approximately ten insurance company inquiries to the police for reports are returned daily because they contain insufficient information or the required fees have not been enclosed. In fact, some company employees try to by-pass the fee charged by sending their claimants directly to the police to obtain the required information and this only causes delay. It is doubtful whether the fees charged by the police are sufficient in many cases to cover the cost of preparing reports.

Insurance companies could be of greater assistance to their clients if they disclosed information on the actual nature of the policy in the simplest possible terms. It is admitted that unfortunately many people who purchase insurance simply do not read with care its conditions and exceptions; nevertheless, the client should be informed whether the policy covers claimed value or replacement value, and what the victim's relationship is to goods which are recovered once a settlement has been made. Some insurance companies and the Insurance Bureau of Canada have made efforts in this regard but a more concerted effort is still needed.

Victims are often unaware that once compensation is made the insurance company then has a subrogated interest in the ownership rights of the property which replaces the victim's ownership interest. It is ironic that this lack of awareness may deter victims in the identification of stolen goods. Having perhaps received new or technologically superior goods in satisfaction of their claims they may be reluctant to identify the recovered stolen goods for fear that such identification might lead to the loss of their new goods.

Obviously there would be less likelihood of goods being stolen if owners would take more precautions in safeguarding their property. Equally there is more likelihood of stolen goods being recovered if they are easy to identify as belonging to their owner. In many areas programmes similar to Operation Identification are being carried out. Simply, this is a programme which discourages theft by marking goods with an electric engraver or with 'invisible' ink that only becomes visible under ultra-violet light. Users may borrow the necessary marking implements from their local police department. Identification is possible by the engraving or marking of a social insurance number, driver's licence or a specially assigned number in the case of schools and businesses.

This type of marking does make it difficult for goods to be sold, and makes it much easier for them to be traced. There is, however, one drawback to its utility as a crime prevention tool, or as a means for speeding the return of recovered goods to victims of crime. Police respondents indicated that the public has not responded well to the scheme. Since this scheme depends upon public interest, participation and initiative, and these have so far not been forthcoming, it has not fulfilled its potential.

The programme is worth supporting and deserves more concentrated and personal marketing. The employment of summer students under supervision covering an area on a door-to-door basis offering to mark householders' property has been a successful innovation and could be more widely utilized.

The Task Force recommends that:

1. The Criminal Code be amended to impose a duty on police and court officials to return the victim's property as soon as possible and to impose a maximum period of detention with a procedure for extension of the period of detention only where the property may still be required as evidence.

2. The Criminal Code be amended to endorse the procedure of photographing stolen property to be used as evidence at trial where possible, so that the property can be returned to its lawful owner.

3. Police forces should consider the adoption of programmes similar to or modelled on the Edmonton system of early property return to victims of theft.

4. Victims should not be placed in a position where they must repay pawnbrokers in order to speed the recovery of their property; the remedy of the pawnbrokers is against the accused or the person having sold the property and not against the victim. Similarly, the current practice of some police forces of withholding stolen property until the ticket disbursement has been paid by the victim to the pawnbroker should cease.

5. Police departments should make every effort to minimize the delay which occurs between an insurance company's request for a police report and the receipt of that report. It is acknowledged that an increase in charges for preparing such reports may be necessary to facilitate this proposal.

6. Ministers responsible for supervising the insurance industry should ask the industry to make a concerted effort to ensure that all insurance companies provide detailed information on the actual nature of their policies relating to claims for the theft of property; the co-operation of the Insurance Bureau of Canada should be sought in this regard.

7. Police departments and the insurance industry should further increase their efforts to inform the public of the existence, purpose and methods of Operation Identification and of the ease with

which property can be marked for identification; the employment of summer students to mark and identify property appears to hold promise for expanding the use of this service.

RESTITUTION IN THE SENTENCING PROCESS

One of the key concerns of victims' advocates is to increase the possibility that victims of crime will receive financial reparation for the losses resulting from criminal activity. This had led to the suggestion that a logical reform would be to increase the use of reparative sanctions within the criminal sentencing process. It is felt that an increased emphasis on restitution by offenders could be a positive step towards dealing with the needs of victims of crime.

As we have explained earlier, the term 'restitution' is being used here to refer to the full range of criminal law and civil law sanctions which require an offender to repair the harm done to a victim. One problem in using restitution as a sentence is that of balancing the concern for the victim with the needs of offenders and the requirements of society. A second problem is that there are obviously limits to the use of restitution. It is of benefit to victims only in those cases where an offender has been identified. While it is a very appropriate sentence where theft, vandalism, break-and-enter, other property offences and robberies are concerned, it is more difficult to apply to crimes of violence.

There have been a number of innovative experiments involving the use of restitution as a criminal sentence. However, most of these have been based on a concern to provide a cheaper, more effective and more humane form of rehabilitation. It is only in the last few years that pressure for an increased use of restitution has been applied on behalf of victims of crime. The arguments of victims' advocates usually focus on the injuries or losses suffered by victims, and on the desirability of reforming the sentencing process so as to provide at least a partial remedy to this situation. The victims' movement, however, is divided as to the manner in which the sentencing process should be modified. The moderates take the position that the victim must be more systematically included in that process, while more radical reformers argue that the victim should be a full and equal partner in all phases of the trial process. Obviously, the discussion boils down to a debate over the aims of criminal law and sentencing, and over the proper role of the victim in the scheme of things.

The Government of Canada has attempted to present its position on these issues in its recent work on The Criminal Law in Canadian Society (1982). Its basic position is that the criminal law is a tool to be used with restraint in the attempt to assure a just and secure society, and to deal with culpable conduct that causes harm to individuals or threatens essential or important values. More specifically, in its discussion of sentencing, it argues that there is an onus on the criminal justice system:

> ....to apply the least restrictive form of sanction adequate to the circumstances, and a requirement to restrict the amount of the sanction to that which is justifiably necessary and adequate.

The document discusses the place of the victim within the criminal justice process. It rejects the notion of including the victim as a full partner, since this would constitute a threat to the ability of the system to deal with its responsibilities to society and to offenders. However, there is a clear and unambiguous recognition of both the needs of victims of crime, and of the desirability of directing the criminal justice system to consider these needs to a greater extent than is now the case. There is a recognition of the legitimacy and value of reparative sentencing, both for the victim and the offender, and an attempt to remove barriers to the use of this approach where the circumstances of the case make it appropriate.

This is an encouraging development, one which reflects innovations in recent sentencing policy and which attempts to exert some leadership in the attempt to modify the criminal justice system so that the harm done to victims will receive more systematic consideration, and, hopefully, a more adequate level of reparation. However, it is a proposal which is short on concrete suggestions as to how restitution might work in practice. For some insight into this question, we now turn to an examination of some of the more concrete proposals and attempts to engage the offender in restitution.

The major focus of this examination is on the place of the reparative sanction of restitution within a reformed criminal law sentencing process. This directs us to three major questions: What are the aims of an increased use of restitution as a sentence? What considerations must be taken into account in establishing policies and programmes for the use of restitution? What is the place of the victim in this process?

The argument which is most commonly made in favour of an increased use of restitution by offenders is that it is an efficient and cost-effective means of meeting the aims of criminal sentencing which, at the same time, allows the system to recognize and respond to the harm done to victims of crime. Restitution, then, is proposed and defended as a means to an end. Like any other criminal sanction, it can serve to punish the offender (retribution), to express society's commitment to essential or important values and denounce a breach of these values, to further the rehabilitation (reform) and reintegration of the offender, and to deter further criminal activity by either the specific offender or by other members of society. In addition, it offers the promise of reconciling victims and offenders, a function which is beneficial to both the immediate participants and to the welfare of society. The position of those who would increase the use of this approach is that restitution is as likely to fulfil the aims of sentencing as any of the available alternates.

The implication is that if practitioners of the criminal justice system were more sensitized to the use of restitution, we would be on the verge of a sentencing utopia. However, the fact is that there is not a great deal of research which can be reliably and validly used to either support or criticize such a position, or as a basis for new policies and programmes.

In the absence of reliable data practitioners seem to be much more impressed with immediate practical concerns, such as the impact of restitution on their workload, the difficulty of enforcing restitution orders, and even whether the public will perceive such an approach as an indication that the criminal justice system is lax and is coddling offenders. There is little of the kind of 'hard' data which might allow us to decide conclusively whether the benefits of restitution outweigh its costs (or vice versa). The type of information needed falls into five general areas.

Types of Situation: Are some types of criminal victimization more amenable to the use of restitution than others? There is some suggestion that reparative programmes involving mediation or conciliation work best where the parties are acquainted, or have a special duty to one another (Government of Canada, 1982). This implies that such an approach will be less effective in cases of predatory crime between strangers. In addition, a decision must be made as to how victim-precipitated crimes might be handled, or whether one might wish to adjust programmes in terms of the seriousness of the offence.

Type of Offender: Is restitution better suited to either punishing or reforming some offenders rather than others? The obvious problem here is that it is difficult to specify what constitutes punishment, or what is a conclusive measure of rehabilitation. Perhaps more importantly, doubts have been expressed as to whether most offenders can 'afford' to pay restitution.

Repayment rates (96%) in an organized restitution programme in Saskatchewan are extremely high (Saskatchewan Correctional Services, 1982). In Ontario, the total amount of restitution paid in 1982-83 was $2,017,564. It should be noted also that nearly one-fifth (19%) of all probation orders had a condition of restitution attached (Ministry of Correctional Services, Ontario, 1983). Data from the United States suggest that relatively few theft losses are so high as to preclude restitution to victims by offenders, despite the very low income of offenders (Harland, Alan: Restitution to Victims of Personal and Household Crimes, U.S. Department of Justice, 1981). However, more research is necessary in this area before conclusive generalizations can be made.

Type of Victim: Should courts be directed to favour restitution in cases where victims are indigent, and to forego restitution in cases where victims are insured? While this is in part related to the wider issue of the aims of sentencing and the place of the victim in this process, it will also have a definite impact on the way a sentence is perceived by the offender, the victim and the public.

The Criminal Justice System: Is restitution worth the time and trouble (especially in terms of supervision and enforcement) for practitioners in the court and probation systems? Obviously, the problem is to choose measures of efficiency and cost-effectiveness which are acceptable to all participants in the debate. At this point, it can be said that restitution exerts less direct drain on resources than a prison sentence, but it is unclear whether the savings will be consumed by the increased resources required by court, supervisory and enforcement personnel.

Public Opinion: How will the public react to an increased use of restitution? There seems to be an increasing level of public support for initiatives designed to assist victims of crime but that support takes different forms. On one hand are those who believe that much heavier punishments should be meted out to offenders and that such a step would satisfy victims. On the other hand, their detractors say that they are probably wrong on both counts. They point to the fact that punitive countries such as Iran do not benefit from less crime, while moderate countries such as the Netherlands do not suffer from more crime. Moreover, they do not believe victims want harsh punishments so much as they want reparation for their loss. They see all punishment as destructive, and are convinced that the length of a prison term is directly related to the anger and bitterness of the offender at the point of release.

Sentencing will continue to be an interminable subject for debate if only because traditionalists and reformers are not likely to change their views in the absence of hard evidence. We need to know much more about what kind of sentence has what kind of effect upon what kind of offender at what point in his development. We simply do not know.

From the point of view of victims of crime, restitution would seem to offer the best chance of obtaining reparation for their losses within the criminal justice process. In the absence of data that 'proves' that restitution is better than other sentences, it can at least be said to offer the promise of better things to victims without requiring a radical transformation of the principle features of the present system.

The Task Force recommends that:

8. The Criminal Code s.653 be amended to require judges to consider restitution in all appropriate cases and to provide an opportunity to victims to make representations to the court regarding their ascertainable losses.

9. A provision should be included in the Criminal Code to empower the court to impose a jail term where the accused wilfully defaults

in the restitution ordered by the court.

10. The Criminal Code s. 388 be amended to cover situations where the damage caused does not exceed $500, and that compensation could be ordered up to $500, instead of the present limit of $50.

11. All Ministers responsible for Criminal Justice examine the extent to which increased support could be given to research enquiring into the various effects of different sentences, and different forms of sentence, upon offenders.

CASE MANAGEMENT

The attempt to design efficient and cost-effective methods of processing cases is an obvious concern for the criminal justice system, especially during a period when fiscal constraint is so dominant a theme. Ironically, this is an area where the system's interest in saving time and money can have very positive repercussions for meeting the needs of victims and witnesses of crime. It would seem that the goals of the system and the concerns of victims can both be served; for that matter, they are mutually enhancing. More specifically, a well informed victim is more likely to be a co-operative witness, and may well facilitate the processing of a case.

An excellent example of this can be found in the recent initiative by the Attorney General of British Columbia to revise its case management system. The overall goal was to streamline case management procedures so as to eliminate case backlogs, increase efficiency and reduce costs.

This reform dealt with many aspects of information processing and control within the system. However, the immediate concern is with the impact of these changes on victims and witnesses of crime. The aspects of the British Columbia programme which focus on this area include a process of civilian witness notification and identification, and an improved trial scheduling process. Under this programme, civilian witnesses are notified by phone and/or mail for all but about 10% of witnesses, thus reducing costs. The indication is that appearance rates are at least as high using this approach, but at considerably less cost. In addition, witnesses appear to appreciate the verbal dialogue and find it convenient to have a person to contact for further information (Bradley and Associates: Evaluation of Case

Management Procedures in the British Columbia Justice System, 1983).

Witnesses' service centres are being established in larger metropolitan areas to administer this programme. The centre operates under the control of the Crown Counsel, and is responsible for document preparation, informing witnesses about all aspects of their appearance, and arranging for witness travel and accommodation (through a central reservation system). In smaller centres, a single witness notifier is responsible for the above. It is still too early to fully assess the success of this initiative, but considerable cost and efficiency benefits have been obtained through the use of the central travel arrangements and reservation system now in place (Bradley and Associates, 1983).

Finally, new trial co-ordination programmes are being introduced in six major centres to assist the judiciary to schedule trials so as to process the greatest number of cases in a timely manner with minimum inconvenience to all participants. Unfortunately, it is still too early to evaluate the impact of this procedure.

Overall, the initial costs of establishing the new system seem to be offset by savings in time and efficiency, and in money, especially through the reduction of personnel to deliver subpoenae and the reduction of police overtime costs from reducing unnecessary police witnesses (Bradley and Associates, 1983).

From the point of view of the victim, the important factor is that benefits are obtained while the costs to the system appear to be reduced. Moreover, none of the changes in question involve any changes in the current aims and purposes of the criminal justice system, nor do they pose any threat to the rights of the accused. Clearly, this is an area of great promise for victims of crime.

There are other and similar attempts to revise current management practices with a view to making them more responsive to the needs of the victims. Projects of this kind exist in Montreal, Whitehorse, Ottawa, Yellowknife, and perhaps elsewhere. In all cases, one of the main merits of these efforts is that local justice officials who know better than anyone else what their own practices are and what they purport to accomplish can work together and use their individual and collective experience to find solutions to the difficulties met by victims of crime.

Collectively, these officials have developed all kinds of practical solutions that are consistent with their particular needs and resources. For example, in one case officials may judge that, given the resources at their disposal, it is preferable to abolish 'witness fees', a practice which creates more difficulties than benefits, and to concentrate their efforts on minimizing inconveniences caused to victims when they are required to testify. In another case, their attention may focus upon the fact that there is really no reason why the subpoena delivered to the civilian witness should refer to a crime by the number of the relevant Criminal Code section as opposed to its name. There are many other examples and, while it is important to give an opportunity to learn about the experience gathered by others, this Report cannot attempt to fully catalogue all such initiatives.

CRIMINAL INJURIES COMPENSATION

Compensation involves the payment of money from public funds in order to repair or alleviate the losses of victims of crime. However, the recourse to compensation as a strategy for aiding victims can be justified on the basis of very different orientations to the role of state intervention.

In the scope of this report we can deal only briefly with these orientations which, it can be argued, spring from two basic rationales. Both invoke state intervention, but that intervention takes different forms. One could be called the humanitarian approach: it is based upon a natural justice model and focuses primarily upon the needs of the system. The other could be called the insurance approach and is based upon the concept of social justice or collective responsibility.

The former justifies state intervention in the form of welfare on the basis of the contribution such a practice can make to the social system, and of the moral duty to assist those victims of criminal injury who are deemed to be innocent and considered to be worthy. This position is reflected in the work of the Law Reform Commission of Canada:

> Compensation for victims of crime can be a valuable tool in supporting the purposes of the criminal law... the Commission is of the view

> that one of the purposes of the law is to protect core values...A violation of these values in some cases may not only be an injury to individual rights, but an injury as well to the feeling of trust in society generally. Thus, the law ought... to restore the harm done to public trust and confidence... (Compensation) should not be lost sight of as another meaningful and visible demonstration of societal concerns that criminal wrongs be righted. (1974).

Thus compensation serves the system's security and stability by restoring the sense of interpersonal trust which is fundamental to the operation of a democratic society and which is threatened by crime. There is sympathy for the plight of innocent sufferers. The state has a moral duty to them because the justice system is unable to guarantee the prevention of crime or to give assurance that offenders will be brought forward to make restitution to their victims. This approach tends to emphasize that only deserving victims be assisted. Those who contributed in some way toward their own victimization are not seen to be deserving. It also adopts the stance that assistance should be given only to the victims of violent crime since those crimes are the ones which most threaten the core values of individual dignity and reciprocal trust.

The insurance approach shifts the focus of concern from the needs of the system to those of individual members of society, and to the responsibility of social institutions to respond to these needs. It justifies state intervention on the basis of the contribution such a practice can make to satisfying some of these needs. It is based on a recognition that certain types of crime are a predictable outcome of our current social arrangements, and that the liability resulting from these arrangements should be shared by all. Compensation is simply a form of insurance against this liability.

It is the proponents of the insurance approach who are the most likely to be impressed by arguments focussing on the relative inability of the poor to purchase insurance protection in the market place, or on the relatively greater probability of these individuals being victimized in the first place. Compensation is a strategy for responding to this social reality; one which has a number of practical consequences. Such an approach will be less concerned with the moral or utilitarian questions of the innocence or worthiness of the victim. It will be more likely to focus on individual needs than on the moral validity of the claimant, and to recognize the arbitrary nature of the present focus on crimes of violence which characterizes most compensation schemes. To proponents of this approach, the decision to exclude property offences reflects practical concerns, such as cost, which are important but which derive from a different frame of reference. The insurance model is also less likely to see any moral justification for funding these programmes through levies on criminal offences.

Finally, those who favour the insurance approach would contend that there is no theoretical basis for administering compensation strictly within the criminal justice system. Rather, since compensation is designed as an insurance programme, the argument is that the cheapest and most efficient strategy is to graft such schemes to similar programmes already in existence such as workers' compensation boards. There is evidence to show that costs are reduced if this is done.

New Zealand has adopted an insurance-based approach to crime compensation. A statutory body, the Accident Compensation Commission, acts as the administering tribunal for the New Zealand scheme. The definition of victim is irrelevant to the operation of the Accident Compensation Act because of the absorption of the victim compensation scheme into this wider framework. Any claims which would have been previously made in relation to motor vehicle accidents, criminal injuries and worker's compensation are now handled under the Accident Compensation Act. The programme is so comprehensive that it covers practically everyone in the country, whether resident or visitor, for any kind of accident no matter how or when it happens or who is at fault.

Thus, there are two vastly different rationales for victim compensation schemes, each of which has significant consequences for the design and delivery of such schemes. In Canada, most jurisdictions have adopted the humanitarian approach to compensation. Such schemes are generally designed to represent a form of state charity or welfare, and are based on the moral duty to aid innocent victims of an unfortunate event. However, the Manitoba and Quebec schemes provide an interesting contrast since both administer their schemes through the provincial workers' compensation board. It is not clear whether this reflects an attempt to integrate the compensation strategy within a wider and more comprehensive insurance scheme or a desire to simply reduce administrative costs, or encompasses both purposes. British Columbia also uses this administrative format, but its rationale is unclear since it compensates as if damages were awarded in civil court, rather than as if the victim were injured in a work-related accident.

This distinction in the choice of rationales is especially interesting in the light of data which suggests that the insurance-based schemes are more effective in responding to the financial needs of victims, and have significantly lower administrative costs, (Hastings, Ross: 1982). This indicates that improvements in the ability of compensation schemes to repair the financial costs of crime will require each jurisdiction to examine its present administrative practices.

While the rationale supporting compensation schemes is important, the design and delivery of the service is much more so from the victim's viewpoint. The Task Force examined in some detail the manner in which the Boards operate and acknowledged that they have every right to exercise discretion on where they place their priorities and in the methods they use to deliver their service. In dealing with such issues, for example, as pecuniary loss, or the manner in which payments are made, each Board should be left to determine how best to proceed.

There are some areas, however, where the Task Force believes that a greater degree of consistency could well apply or where other fundamental changes could work to the benefit of all victims. These areas are:

New Resources

While victims appreciate the advice and assistance which they are given by the Boards, there are concerns voiced that they receive little more than token financial help. When one considers the budgets of some of the Boards this is understandable; how much less victims would receive if the work of the Boards were better known and if more people applied for assistance could only be imagined. For the Boards to perform their work in the way in which they perceive it should be done and we suspect in the way in which the public believes it should be done, an infusion of new resources is required.

This is related directly to the issue of the rationale behind the scheme. If one supports the humanitarian or charity approach then it must be accepted that adequate compensation is unlikely to be paid in most cases. If one accepts the insurance approach then the likelihood of adequate reparation increases.

Collateral Benefits

Collateral benefits, i.e., those monetary benefits received through insurance payments, etc., are deducted from the total award so that a victim will not receive double recovery for the injuries suffered. The Task Force agrees with this principle, but questions whether welfare payments should be considered a collateral benefit. These payments are made in respect of financial need, and not to help the victim as a result of crime. To the victim, a deduction of welfare represents another form of secondary victimization by the criminal justice system. Equally the action of welfare agencies in deducting compensation awards from the calculation of welfare payments is open to question.

Maximum Limits

In an attempt to ensure that the costs of compensation schemes are kept within reasonable limits, most jurisdictions impose a maximum limit. The Task Force accepts this fact but expresses concern that the limits have not kept pace with the increasing costs of living.

Loss Calculation

Two different approaches are used in order to calculate loss and make deductions in the determination of an award. One method is that of determining the loss, subjecting that amount to the maximum limit and then deducting the benefits; the second method is that of determining the loss, deducting the benefit and then subjecting the amount to the maximum limit. It would appear to the Task Force that the latter procedure is more in keeping with the principle of awarding full compensation for actual loss than is the former.

Public Information

Throughout the report it has been stressed that the primary need expressed by the majority of victims is for information. In the area of compensation this is particularly important. Since we are conscious of the fact that few people know even of the existence of Criminal Injuries Compensation Boards and very few of those who do know avail themselves of their services, a great deal needs to be accomplished in the area of public information. It should be noted that some jurisdictions are now making special efforts to accomplish this.

Reciprocity

Canadian residents are not covered if they travel to a jurisdiction which does not award compensation to non-residents. This situation could be remedied by expanding the type of reciprocal coverage, for example, which now exists between Ontario and the State of New York. This would increase the protection offered to Canadians while not requiring any significant expansion of the existing compensation programmes.

Oral Hearings

In some jurisdictions victims are asked to attend hearings of the Board and to speak to their case; in others victims are informed that they may do so if they wish; in yet others decisions are made entirely upon the evidence obtained from documentation.

Where victims are expressly invited to attend, then a secondary, but very important, benefit of the Board's operation ensues. Victims are given a forum in which to be heard and an opportunity to tell their side of the story which may not have been brought to light at the court hearing. Correspondence from victims attest to the comfort they found from having - in some cases for the first time - a willing ear and the therapeutic effect of this alone should not be underestimated. In the absence of a readily available network of counselling services to assist the victim in this way, it is believed that those Boards which encourage personal attendance at the hearings are performing a valuable task.

Good Samaritans

A Good Samaritan has been defined for these purposes as one who is injured while attempting to prevent a crime, preserving peace, assisting a police officer or while arresting a person.

Legislation and/or practice in all jurisdictions suggest that a Good Samaritan must be acting lawfully to receive compensation. This leaves the possibility that an applicant could be denied compensation on the basis of a legal technicality, such as having committed a minor traffic violation in order to assist a victim. The Task Force does not consider this to be appropriate and believes that a more just approach is to be found in the proposed Uniform Crime Victims Reparation Act in the U.S.A. where the Good Samaritan should only be required to have acted in good faith.

Non-Pecuniary Loss

While most Canadian jurisdictions award payments for non-pecuniary loss, not all do so. Some make awards for pain and suffering to the primary victim and some also award compensation to dependants, e.g., the parents of a deceased victim whose suffering is equated with mental or nervous shock.

Awards for pain and suffering are important in that they provide some victims with compensation when they would otherwise receive nothing. For example, a victim of sexual assault who is covered by provincial health insurance and therefore has no expenses, would not receive any compensation if awards for pain and suffering were not made. On the same note one must recognize that pain and suffering are not restricted to the primary victim. A close family can experience mental shock as the result of the death of a family member.

It has been contended that money for pain and suffering would be better used if applied directly to victim services. Supporters of such a policy feel that money would reach more victims and better satisfy their needs, rather than be used as 'token gestures' in pain and suffering awards. People opposing such a policy change argue that if awards for pain and suffering were not made, some victims would not receive any compensation.

The Task Force recommends that:

12. An examination of the humanitarian vs. insurance methods of operating and funding Crime Compensation programmes should be undertaken by a Federal/Provincial working group and a full exploration of the costs/benefits of the New Zealand programme should be incorporated into that examination.

13. There should be an increase in the amount of funding provided by federal and provincial bodies to the programmes, since in general the awards only go a modest way to providing full compensation for the losses suffered.

14. In all jurisdictions where maximum limits on awards are imposed, the calculation of loss should follow the procedures of firstly, determining the loss; secondly, deducting any collateral benefits, excepting welfare payments; and thirdly, subjecting the amount to the maximum limit.

15. In all jurisdictions where maximum limits on awards are imposed, those limits should be reviewed regularly to ensure that they keep pace with the cost of living.

16. A campaign should be launched in each jurisdiction to acquaint citizens as fully as possible with the existence of Criminal Injury Compensation Boards and their purpose. The police should be required to provide victims of crime with information on the existence and purpose of the Boards. Hospitals and other institutions and agencies should be urged to support the police in doing so.

17. Further efforts should be made to achieve reciprocity between Canadian and other jurisdictions which operate criminal injuries compensation schemes, with particular reference to the U.S.A.

18. Jurisdictions which presently do not encourage and/or welcome the personal attendance of applicants at crime compensation hearings should be requested to re-examine their practice in the light of the experienced benefits for victims of such hearings.

19. The requirement that Good Samaritans be acting 'lawfully' in order to claim compensation should be changed to 'acting in good faith' in both legislation and practice.

20. Jurisdictions which presently do not make awards for pain and suffering to the primary victim and/or awards for mental and nervous shock to a victim's dependants should be requested to re-examine their rationale for not doing so.

VICTIM IMPACT STATEMENT

The sentencing process itself affords little opportunity for the victim's views to be made known. Victims who have followed 'their' case from the initial charge, through a preliminary inquiry and trial without having any input may view the sentencing hearing as an appropriate opportunity for involvement.

Victim input into sentencing could be accomplished through the use of a victim impact statement. This mechanism of presenting to the court the effects of the crime on the victim was first advocated in the United States and has been implemented in nearly all states. However, such legislation at the U.S. federal level such as the Bill to Protect Victims of Crime, 1982 tends to be ambiguous by requiring:

"The (sentencing) report shall also contain verified information stated in a non-argumentative style assessing the financial, social, pyschological and medical impact upon and cost to any person who was the victim of the offence committed by the defendant."

The potential use of a victim impact statement in Canada could vary between provinces depending on whether it is viewed as a matter of criminal procedure which would require an amendment to the Criminal Code, or as a matter falling within provincial responsibility for the administration of justice. It should be noted that the Young Offenders Act provides that the pre-sentence report shall contain the results of an interview with the victim where appropriate.

Several factors must be considered in assessing the implications of the use of a victim impact statement. Where the accused pleads guilty at the first appearance in court, the preparation of a victim impact statement would require an adjournment of the sentencing hearing. If the statement were part of the pre-sentence report the probation officer would be required to interview the victim or the victim would be required to fill in a prescribed form. The type of information to be gathered from the victim must also be considered.

A general statement from victims regarding the effect of the crime upon them would be less burdensome for the victims but may be of little value to the court. However, requiring victims to state their losses and verify them may add to their frustration rather than satisfy their need for input. In addition, it must be determined whether victims would be required to swear their statements upon oath.

It is apparent that the establishment of a policy for the use of a victim impact statement is not without difficulties. However, the concern for technicalities should not cause us to abandon the intended purpose of affording victims an opportunity to present their views.

A practical approach may be the inclusion of a victim impact statement with the pre-sentence report. A prescribed form could be completed by the probation officer in consultation with the victim stating any physical injuries suffered, the nature of any emotional consequences and property lost or damaged with estimates or receipts, if available. Where the victim is seeking an order of restitution pursuant to s. 653 or s. 663 the damage to property should be verified by estimates or receipts. The statement would then be available to defence counsel along with the pre-sentence report prior to sentencing and defence counsel could make submissions with respect to the statement. As the ultimate sentence is in the discretion of the judge, the victim impact statement would be one of the many factors considered in reaching an appropriate sentence.

It should be emphasized that there is no procedural bar to the victim giving oral testimony at the sentencing hearing under examination by Crown Counsel. This would also satisfy the victim's desire to be heard without great inconvenience to the court.

The Task Force recommends that:

21. The Criminal Code be amended to permit the introduction of a victim impact statement to be considered at the time of sentencing.

PROTECTION FROM INTIMIDATION

Intimidation by the accused or by relatives and friends of the accused may be real in the form of actual threats against the victim or may merely be perceived by the victim. In both cases it may result in the victim not appearing as a witness at trial or not co-operating in the investigation.

The Task Force recommends that:

22. S. 381 of the Criminal Code which makes intimidating behaviour a summary conviction offence be amended to increase the penalty where such intimidation is practised on a victim or witness by the accused, and that consideration be given

to making such conduct an indictable offence in order to reflect its serious nature.

IN-CAMERA HEARINGS

Many victims are fearful of facing spectators in the courtroom and having their identity or details of their victimization published or broadcast in the media. The Criminal Code currently provides that a judge may exclude members of the public from the courtroom where he is of the opinion that it is in the interest of public morals, the maintenance of order or the proper administration of justice. In sexual assault trials, the victim is informed of the right to request an order prohibiting publication of identity and where such an application is made the judge must make the order. In-camera hearings are more common in sexual assault trials.

The Task Force recommends that:

23. The Criminal Code be amended to allow all victims to make an application for an in-camera hearing and an order prohibiting publication or broadcast of their identity. The Criminal Code should also be amended to require the judge to advise the victim of this right at the first opportunity; the presiding judge would then assess the circumstances of the particular case and the reasons of the victim before making the appropriate order.

TRIAL WITHIN A REASONABLE TIME

Not only victims but many who work within the justice field chafe at the delays which occur in many cases before they are brought to trial. Victims and witnesses have complained that often months and sometimes years pass before the trial is held. Delays, however they are caused, tend to work for the benefit of the accused as the passage of time not only dims the memories of victims and of witnesses but leaves them with a feeling that some degree of interest has been lost in the case and is hardly an encouragement to their co-operation.

The Task Force recommends that:

24. The Criminal Code be amended to provide that all criminal trials and preliminary inquiries be commenced within six months from the accused's first appearance in court or the charge be dismissed for want of prosecution; the provision would allow for an extension of that period where the Court believed there to be exceptional circumstances.

SERVICES

There are two approaches that can be taken to improve the present level of services to victims. One is to create separate victim/witness assistance programmes with staff and resources specifically assigned for this purpose, and the other is to improve services by changing the practices and procedures of existing agencies. These are not mutually exclusive and both approaches would seem to be needed.

GENERAL SERVICES

In terms of programmes at the police level, special victim service units such as those created by the Edmonton and Calgary police departments (see Appendix I), have been established by a number of other police departments across Canada. Sometimes these are organized within crime prevention units or within community services sections. Many of these programmes are closely linked to voluntary agencies and the services provided usually include assistance to victims during the court process for those cases where offenders are charged.

Although their primary goal is to meet the needs of victims and to minimize inconveniences associated with their involvement in the criminal justice process, these programmes often produce secondary benefits to the police. These include improving police/community relations, increasing citizen involvement, preventing further victimization, increasing public awareness and use of community services, and increasing the willingness to report crime and co-operate with the investigation and prosecution process.

Rather than create separate victim assistance units with separate staff and resources, it is also possible for police departments to attempt to improve victim and witness services as part of the normal operating procedures of the entire department. While this is likely to be less costly it is also advantageous in that the responsibility for helping victims and witnesses is accepted as part of the normal duties of all members of the police departments and not simply that of a group of officers designated to do so. The issues are somewhat similar to those in crime prevention which either can be assigned to a special crime prevention unit with a few officers, or can be made part of the practices of all members. Reorienting an entire police department from a law enforcement to a crime prevention perspective can require major changes in the basic approach to policing and in standard operating procedures. A similar shift may be required with respect to making victim and witness assistance part of the basic policies of a police force.

Even without special victim assistance programsme, police officers have always provided a variety of services to victims and witnesses. It is important, however, that these services be extended. The police are the most important agency for helping victims because they usually are the first criminal justice agency contacted by the majority of victims. The question of exactly how the police can improve victim and witness services is best answered at the local level and should be based on an analysis of local needs and resources.

The other components of the criminal justice system can follow the police lead in providing services to assist victims and witnesses through special programmes, and/or as part of their standard operating procedures. In contrast to police-based programmes, it would appear that relatively few distinct victim/witness assistance programmes have been implemented yet by Crown Counsel and courts in Canada.

Appendix I describes several programmes which can serve as valuable models for other areas in the country. Although the particular approach to initiating, improving or expanding services must be adapted to local needs and resources, much can be learned from these pioneer projects.

The Task Force recommends that:

25. Every effort should be made by the various Ministries involved to meet the needs of victims and witnesses and that particular consideration be given to:
    - providing practical assistance and advice to victims on such matters as replacing locks, emergency property repair, transportation, and shelter;
    - providing emergency financial aid which could be available from the police through special arrangements with welfare services;
    - providing crisis counselling to victims and their families either by responding police officers, other professionals or trained volunteers;

- ensuring that police officers minimize the risk of intimidation to victims and witnesses;
- providing training programmes for all police officers to sensitize them to the needs of victims and witnesses, and to ensure their awareness of available community services;
- assisting victims to minimize the likelihood of the recurrence of the offence by advising them what preventive action could be taken.

SPECIALIZED SERVICES

The types of victim assistance services so far described in the Report should be designed in as flexible a manner as possible in order to assist all victims. The Task Force believes, however, that particular initiatives have to be considered in order to meet the needs of certain 'special' victims. The elderly, children, battered wives, sexual assault victims, native victims, and families of homicide victims require special attention because of their particular personal characteristics and vulnerability, or because of the special needs created by certain offences. Although various other victims have special needs (e.g., the disabled, immigrants and other minority groups) which local victim assistance programmes should strive to address, particular attention is drawn in this chapter to ways of improving services for the 'special' groups.

A full and complete analysis of the various services required by these particular victim groups is beyond the scope of this report. Special federal and provincial inquiries have recently examined the needs of assaulted wives, for example, and rather than attempt to replicate such inquiries, this section of the report describes some of the key needs of these victims and how they may be addressed.

The Elderly

Available information generally indicates that the elderly are less frequently victimized (for most crimes at least) than other age groups. However, when they are victimized, the resulting impact of crime is often more severe.

Research also shows that the fear of being victimized is substantially greater among elderly citizens (both victims and non-victims) than younger people, and that this fear often adversely affects their quality of life.

While an outreach rather than a reactive approach should be considered for all victims, it is especially important in the case of elderly victims because the elderly are often reluctant to contact outside agencies or simply do not know how to do so.

The Task Force recommends that:

26. The design of all victim services should ensure that special efforts are made to meet the financial, emotional and practical needs of elderly victims (both direct and indirect needs).

27. Services should be offered in a pro-active or outreach manner by contacting elderly victims, rather than relying on referrals from others or on requiring the victims to request the services.

28. The provision of crime prevention services should be part of any special programme to assist elderly victims since the fear of crime is a major problem for elderly citizens.

Children

There has been an enormous increase in public awareness of the extent and severity of the child abuse problem in Canada. Although the International Year of the Child (1979) served to focus this interest, it is evident that ongoing strategies are required to minimize the incidence of child victimization, and to maximize the effectiveness of child protection and justice system intervention.

Child abuse is the most common, and arguably the most damaging form of victimization to which children are subjected in our society. Public education and awareness initiatives are important strategies for the primary prevention of abuse, and for facilitating speedy identification and intervention. The use of physical force on children has been the subject of considerable debate over the past few years. The Task Force, aware that the Law Reform Commission of Canada is studying all the implications of Section 43 of the Criminal Code, makes no recommendation in this regard.

The most serious form of child abuse is that which is sexual in nature. The Task Force, aware of its time limitations and of the forthcoming Report of the Badgley Committee makes few recommendations in this regard. Those who wish to learn more of the problems surrounding the situation of the child who is sexually abused are referred to the very detailed document "The Legal Response to Sexual Abuse of Children" prepared for the Metropolitan Toronto Chairman's Special Committee on Child Abuse (1982).

The issue of representation of children in various types of court actions is complex and contentious, but it is becoming increasingly clear that one cannot automatically assume that either parents or child protection agencies will represent the child's interests or the child's self-defined interest. Conflicting interests and interpretations may well be in play, and the 'best interests' of the child may be at odds with what the child victim/witness may want. Despite the difficulties involved in establishing the proper role of the representative of the child, and of defining the child's capacity to instruct him it is obvious that it is no longer sufficient to leave these matters to chance or to the exclusive discretion of the court. Nor is it wise to assume that legal counsel is always the most appropriate representative for the child.

The Task Force recommends that:

29. Local child welfare, education and justice system authorities should cooperatively and actively promote positive parenting courses and parenting support systems geared to the needs of special target groups such as: abuse victims themselves, and former abuse victims; teenage parents; children living in homes where wife assault occurs; isolated rural communities, etc.

30. Welfare, education and justice system authorities should co-operate in developing and promoting public education materials which address issues of violence, abuse, and pornography in society at large.

31. Local awareness programmes and intervention protocols should be developed and promoted and more use should be made of information kits on child abuse similar to that devised by SPAR/United Way in Vancouver on Child Sexual Abuse which provides highly relevant and practical information for the wide range of workers who are most likely to be involved in the

discovery and initial intervention in cases of abuse. This is necessary because children who have been sexually abused are frequently too afraid or ashamed to tell anyone, do not have the necessary degree of assertiveness which might offer increased personal safety, or are simply not taken seriously.

32. All jurisdictions should ensure that children who are victims/witnesses are represented in those cases where they will be directly affected by any disposition made by the court.

33. Parents, guardians and child protection agencies should be encouraged to apply for monetary compensation in all cases where serious physical or emotional injury has occurred; guidelines should be established regarding payment and legal control of monies paid to child victims as the result of restitution orders, civil action or criminal justice compensation awards.

Assaulted Wives

During the past decade there has been a steadily increasing awareness of the nature of wife assault, the prevalence of the problem and the difficulties faced by victims who seek help. The first attempts to focus attention on wife assault came from women's groups which began to establish shelters for them. Their efforts to bring the problem to the attention of the general public, political leaders and professionals in social service and criminal justice agencies have been augmented by many other developments. Members of the media, legislative committees, government officials, social service and criminal justice system personnel have made significant contributions to heightened concern about battered wives. Many people would now agree that changes are needed in public attitudes and institutions in order to meet effectively the needs of large numbers of women who are victims of threats and physical violence from their spouses.

Assaulted wives require special attention because they differ in several important respects from other crime victims. They are not perceived traditionally as being victims of crime. They are likely to be subject to repeated violence from their assailants. They are likely to require interventions that afford them protection within and outside their homes. They are financially dependent on their assailants and are, therefore, more likely to require longer- term financial assistance. They are victimized in a manner that may well have serious consequences for their children, whose custody, well-being and safety may be at issue.

When wife assault occurs and outside intervention is sought, the police are usually called and therefore they have a major role to play with respect to protection for these victims. The Task Force believes that the interests of justice and protection for victims are no longer compatible with police policies which encourage diversion of these cases from the criminal justice system. The position which the Task Force endorses is reflected in the following motion passed unanimously in the House of Commons in July, 1982:

> "That this Parliament encourage all Canadian police forces to establish a practice of having the police regularly lay charges in instances of wife beating, as they are inclined to do with any other case of common assault."

This motion affirms the principle that police officers should not use criteria for determining whether to lay charges in wife battering cases that are different from the criteria they use when the incidents involve strangers. The motion is also an indication that, in wife battering cases where police officers have reasonable and probable grounds to believe that an assault has occurred, they should lay a charge rather than merely advise the victim to lay a private information. Finally, the motion affirms the fact that wife assault is a crime which contravenes the norms and values of our society.

Clearly there must be full co-operation between law enforcement personnel and court officials for there to be successful outcomes in cases where charges are laid. The experience in London, Ontario, is worthy of comment. A committee on family violence was formed which consisted not only of law enforcement officers and court officials, but also included representatives of other community organizations. The Committee carried out research on the nature of the problem in the community in order to improve ways of responding to the need and it provided a forum for information exchange. In addition to leading to many changes in the community response to wife assault, the committee provided a model initiative for information gathering, and for discussion between representatives of criminal justice, social service, health and mental health agencies.

Transition houses established in various Canadian communities are providing emergency shelter for assaulted wives and their children. Moreover, they are playing a significant role in increasing our awareness of the needs of these victims. There are presently 165 transition houses in operation and others are in different planning stages. The need for transition houses to protect and assist these particular victims is now widely accepted. However, there are several problems which curtail the ability of transition house workers to meet those needs. Among these problems are the lack of reliable and sustained funding, the geographic, cultural and linguistic barriers which make transition houses inaccessible for many rural, native and immigrant women, and the fact that transition houses alone cannot provide the support required by many assaulted wives and their children. Frequently, community health, counselling, employment, legal and child care services lack the coordination and sometimes the awareness of the special problems to be able to assist the victims to the fullest extent.

Yet another problem is the lack of awareness of the general public and professionals in certain fields of the needs of these victims and their children. The main objectives here are to change public attitudes and provide better services to victims. There is a need for education on family violence to be included in schools and for professionals in the fields of justice, health and the social services. Strong support should be provided to community agencies which seek to perform a public education function with respect to the problem of wife assault.

During the last three years several counselling programmes for abusing spouses have emerged in Canada. Support is needed for the establishment of additional treatment groups, and there is a need for evaluation of those now in existence in order to determine the effectiveness of different types of therapy in terms of reducing or preventing further violence.

Several jurisdictions and agencies have recently completed special inquiries on wife assault and the media deserve full credit for the very responsible manner in which they have drawn further attention of the public to the issues involved. Indeed so much has been said, written and filmed, about the topic that it is not considered necessary to supply a full rationale for the recommendations that follow. For the readers who would wish more detail they are recommended to read the Report, Wife Battering, May

1982, by the Standing Committee on Health, Welfare and Social Affairs (Ottawa), or the Report on Wife Battering by the Government of Ontario Standing Committee on Social Development (December 1982). These Reports were received by the Task Force and were of considerable assistance.

The Task Force recommends that:

34. Written guidelines should be developed which emphasize that wife assault is a criminal offence and should be dealt with as such; the guidelines should state the criteria for law enforcement officers and prosecutors to consider in deciding whether to lay charges and make arrests in assault cases; the guidelines should advise specifically against basing decisions about charging or arresting on the officers' perceptions of the victims' wishes or the likely action of prosecutors or the courts.

35. A comprehensive police training manual should be produced for use by officers and it should include, but not be limited to, providing police officers with current information about the nature of wife assault, the needs of wife assault victims, the changing police role in responding to wife assault, relevant sections of the Criminal Code, and the importance of making referrals to community services.

36. Police officers should respond to all wife assault calls by attending the scene and should keep records on all calls regardless of whether they lay a charge or make an arrest.

37. Police record-keeping systems should permit officers responding to each call to know whether there has been a history of assault, the nature of previous incidents, and whether weapons have been involved. The relationship between the victim and assailant should be indicated on all occurrence reports and charge sheets.

38. All Canadian police education and training centres should offer a course on family violence with an emphasis on wife assault and these courses should be developed with assistance from people in the community who provide services to wife assault victims.

39. All current court orders which prevent a man from seeing or harassing his spouse should be enforced by all police forces.

40. Police forces should institute domestic crisis intervention teams in collaboration with social and mental health services. These teams should be used in addition to, not as a substitute for, laying charges and making arrests where grounds exist for these actions.

41. Police officers should make every reasonable effort to provide or arrange for transportation for assaulted wives and their children when the victims seek shelter outside the family residence.

42. Court orders providing protection for the physical safety of wife assault victims and their children should be obtainable expeditiously.

43. The Ministers responsible for social services in all jurisdictions should:

    a) Review, with the aid of representatives from transition houses, the kinds of services for assaulted wives and their children which are provided by transition house staff and the funding problems which inhibit the creation and jeopardize the maintenance of emergency shelters for assaulted wives across Canada;

    b) Draft a funding agreement that would ensure capital and operating costs are adequately met for houses providing emergency shelter for assaulted wives and their children as well as for necessary support services; start-up grants should be available for emergency shelters and second-stage housing where such facilities are required but do not exist.

    c) Review alternative means of providing protection and services to special groups of wife assault victims including rural, native, immigrant women, and women of language minorities.

44. Ministers responsible for housing in each jurisdiction should ensure that wife assault victims and their children have greater access

to subsidized housing units as emergency shelters, second-stage housing and permanent housing.

45. Programmes for research and demonstration projects within Health and Welfare Canada, and the federal Departments of Justice and Solicitor General should provide funds for the development and assessment of counselling services for abusing spouses; the services should be available as sentencing options for the Court and for referrals from other court officials.

46. The National Clearing House on Family Violence should continue to provide information on wife assault issues and the kinds of services that community groups may choose to establish to help meet the needs of wife assault victims, children from violent homes and abusing spouses.

47. Police departments should be urged to assist in providing information to the public about wife assault and the legal and social service options available to victims.

48. Provincial Ministries of Education should consider incorporating materials on family violence and wife assault into appropriate school curricula.

49. Research should be conducted on decision-making in wife assault cases at various stages in the criminal justice system and on the effectiveness of different dispositions for preventing further violence.

Sexual Assault Victims

In addition to physical injuries, victims of sexual assault experience intense emotional trauma which often includes such feelings as helplessness, anger, guilt and shame that may have long-term debilitating consequences. If the crime is reported, the sometimes insensitive responses of medical and criminal justice agencies can accentuate these reactions and create a wide variety of secondary needs. Some hospitals and police departments have instituted special procedures to assist these victims and there are now more than fifty sexual assault crisis centres in Canada.

The first of these centres was developed in Canada in the mid-1970's as a result of the efforts of women's groups. The services they provide usually include crisis counselling, short- and long-term emotional support, and practical assistance and information to victims and their families and friends to help them in dealing with medical and legal agencies. In addition they provide public and professional education designed to improve available services and to prevent sexual assault.

Unfortunately, sexual assault centres do not exist in all parts of Canada, and are almost totally absent in small towns and rural areas. Moreover, it is obvious that the needs of sexual assault victims cannot be met only by centres of this kind. There is a need for sensitive and collaborative approaches from hospitals and mental health services, and from the police, prosecution and courts. There is also a need for public and professional education designed to explore the many myths surrounding the offence, since they very much affect the manner in which people respond to victims of sexual assault; a case in point would be police departments (though admittedly very few) which subject sexual assault victims to polygraph lie detector tests.

The Task Force believes that sexual assault crisis centres must be recognized as a valid and essential service and should be more widely available. The fact that there are relatively few of them may be a reflection of the funding problems the centres have experienced. Although short-term funding arrangements have been made to certain centres, few have been able to secure stable funding and several have been forced to close. One of the unfortunate consequences of this is that the staff and volunteers of these centres have to continually devote much of their time to raising funds. This time could better be spent in assisting victims.

The Task Force recommends that:

50. All police departments should implement special training programmes to sensitize officers to the needs of sexual assault victims.

51. Special training and procedures should be implemented in hospitals to ensure that prompt and sensitive care is provided in order to deal with the possibilities of emotional shock, internal injuries, pregnancy, and venereal disease, and to ensure that reliable forensic evidence is collected to facilitate successful investigations and prosecutions.

52. All hospitals should use a standardized sexual assault evidence kit such as that developed by the Province of Ontario.

53. Responding police officers and hospital staff and other local victim assistance services should make special efforts to ensure that the sexual assault victim's practical and emotional needs for crisis counselling are satisfied.

54. Ministers of Welfare and local welfare authorities should encourage communities through the provision of subsidies to establish 24-hour hotline telephone services in order to provide information and emergency crisis counselling.

55. Police departments should review their procedures for deciding whether cases are 'unfounded'; it is important to establish whether this may in some cases be due to inappropriate police investigation practices or to the lack of support services to the victims.

56. Although recent Criminal Code amendments (Bill C-127) should help to reduce some of the humiliation and emotional stress of having to testify in court, prosecution and court practices should be examined at the local level to determine practical steps that might be taken to improve their assistance to sexual assault victims.

Native Victims

Although little objective data are available on the needs of native victims, submissions to this Task Force from a number of native organizations indicate that a sense of alienation from the 'white man's' criminal justice system is one of the major problems of native people who are victims of crime. While native victims also require financial, emotional and practical assistance these needs may be greater because of the limited availability of services for natives who live in isolated communities. This is a problem common to rural victims generally, because it is not possible to provide the same level of services in rural areas as in urban centres. What is important, however, is that whatever services are developed should be culturally appropriate and should directly involve native people in the planning and delivery of services.

Although we are not aware of services whose sole function is to assist native victims, existing programmes such as Native Friendship Centres and Native Courtworker programmes provide information on the criminal justice system and offer other services (e.g., translation, referrals) to both offenders and victims.

The Task Force recommends that:

57. The Federal Department of Justice in consultation with provinces and native organizations should develop public legal education and information programmes specifically addressed to informing native victims of criminal justice processes.

58. Existing organizations such as Special Constables, Native Friendship Centres, Native Courtworkers and Band Social Workers should be encouraged to develop services for victims with special attention being given to problems which appear to be more pronounced for natives; it is important that these services should wherever possible be planned and administered by native persons themselves.

59. Special consideration should be given to reducing problems associated with the heavy workloads and time delays of circuit courts in isolated native communities. Time delays and the inability of Crown prosecutors to contact victim witnesses in advance lead many victims to withdraw their complaints.

60. All jurisdictions should encourage and support the collection of data on the nature and extent of victimization among native peoples.

Families of Homicide Victims

We wish to draw special attention to the importance of considering the needs of the immediate families of homicide victims which can easily be overlooked.

The first need is for compassionate procedures to notify them of the death of their loved ones. Although many families of homicide victims are informed compassionately, the actual way this is done often is left to the initiative of the individual police officer assigned to this task.

The Task Force recommends that:

61. All police departments should develop explicit guidelines and training programmes governing

procedures to be used for death notifications to next of kin. Special consideration should be given to having special officers assigned to this duty based on their training, experience and personal suitability. Means should be developed for ensuring that immediate and long-term counselling and support is provided from local victim assistance programmes and/or social and mental health agencies.

62. Police departments in conjunction with local victim assistance programmes should ensure that families of homicide victims are provided information on the availability of services, on criminal justice procedures, and practical help in dealing with the Coroner's office and in making funeral arrangements. Practical and if necessary financial assistance also should be considered in these cases where family members have to go to other provinces or countries for court appearances or to bring the body of the victim home.

63. Counselling should be offered to family members. Families of homicide victims often feel intense anger and frustration with the way the criminal justice system deals with the case. Some of these reactions could be minimized by having the police and judiciary adopt certain practices (e.g., providing more information on the status of the case; having the police personally continue to contact the family to show concern and check for long-term needs; having Crown Counsels brief family members on pleas and court procedures, and discussing in advance if particular evidence which will be upsetting to family members, such as photographs of the victim, is to be presented in court.)

INFORMATION

In Chapter 4 the basic information needs of victims were described as threefold: information on victim services; information to victims on matters specific to their case and basic information relating to the law and to the justice process. The content of such information and possible means of its dissemination are discussed in this Section.

INFORMATION ON VICTIM SERVICES

The most widely advocated method involves the police and local agencies working co-operatively to produce a pamphlet which would outline the local services available to the victim. The pamphlet could be easily distributed at the time of initial contact with the investigating officer. It is suggested that such a pamphlet should include:

- a phone number with which victims could seek further information when they feel ready to pursue the matter;
- a list of local medical facilities (location, hours of service); crisis services; local repair services; and counselling services for both primary and secondary victim assistance.

It is also important that follow-up information be provided. One method to accomplish this would be the installation of an open phone line. This method is suggested as only a partial solution to the problem. The use of a phone line for victims presupposes that the victim has access, as well as the required level of sophistication to appropriately explain the problem and seek a solution. It is suggested that this presumption is problematic and that a more wide reaching solution be sought. This solution could be found in the addition of an automatic notification system for victims.

This would have the effect of enhancing the victim's access to all necessary information. Victims would be given a pamphlet at the time of initial contact, they would have knowledge of a phone line for further details and they could rely on the automatic notification system for court-related information. Consequently, the victim could be reliably served with the implementation of these three methods.

An excellent long-term solution of information provision to victims has been developed by the Department of Justice in France. The Department has produced a book which is available at newstands and bookstores throughout the country for approximately $5.00. The book contains a list of all available services and provides detailed pertinent information necessary to assist the victims in the resolution of all problems that may be experienced in their dealings with the criminal justice system.

In Canada currently, efforts are being made to rectify the problems that exist in information provision to victims, and the City of Edmonton and the Province of Quebec provide excellent examples of initiatives in this area.

The suggestion has been advanced that it would be useful to collect in one location or centre as wide a variety of material as possible related to the victims issue, and to make this collection available to professionals and the public across Canada. The collection would include material such as research, surveys, articles, documents, films, tapes and any other appropriate material. Its value could be enhanced by a computer-accessible data base in order that information could be stored and retrieved quickly. In addition, such a Centre should be supported by resource people knowledgeable in the area of victim services who could act as consultants in the field. This idea has sufficient merit to be accepted in principle; further study of that concept is recommended.

Another aspect of the information question is the information available to jurisdictions regarding the extent of victimization and the reaction of victims. This Report has relied heavily upon the Canadian Victimization Study, the first of its kind completed in this country. It would certainly be helpful if further studies of this kind were completed at regular intervals.

INFORMATION TO VICTIMS ON MATTERS SPECIFIC TO THEIR CASE

The provision of case-specific information to victims has been identified in the data regarding victims' perception of their own needs as a necessary and important service.

Information programmes should be active in reaching out to victims but should not overwhelm them with more information than they are prepared to handle at any given time - although to justice personnel a particular offence may seem routine, to the victim, the matter is rarely considered to be so. The victim's desire for information on progress being made in regard to the investigation and prosecution of the crime is only natural.

It should be mandatory that victims be provided with information on the laying of a charge/making of an arrest, including the identity of the accused; trial date; and the disposition of the case. In addition, upon the request of victims, they should be provided with information on the granting of bail; and the reasons for adjournments.

Information on the disposition of the case primarily serves to meet the needs of the victim and to reinforce the victim's perception of the criminal justice system as being concerned with the victim. Such information should always be provided at the conclusion of the trial process or on the disposition of the case.

In addition to the foregoing certain victims may seek information on the outcome of bail hearings. While it serves perhaps only to heighten most victims' anxiety to be told when the accused individual has returned to society, some victims may choose to know. It is congruent with a victim's role as a central player in the criminal justice process to inform him or her of such release if the victim requests the information.

INFORMATION ON THE CRIMINAL JUSTICE SYSTEM

For victims who are faced with dealing with the criminal justice system on a matter of personal importance, the onus for the provision of rudimentary information on these issues should, it is submitted, necessarily fall to the system.

It would be beneficial to the victims as well as to the criminal justice system to provide information on the law, legal processes and available services on an ongoing basis. Because victims rely on their friends and family as primary sources of information, the provision of general criminal justice information is important in order to enhance general understanding of and consequently access to the system and related services.

Further research findings attest to this need. One hundred witnesses in Manitoba were interviewed on this subject. A substantial proportion of them expressed their frustration regarding the availability of information regarding the workings of the criminal justice system and about their role as witnesses. Sixty-eight per cent of the witnesses surveyed answered the following question affirmatively:

> "Would you have found it helpful if you could have talked to someone about court procedures and about what was expected of you in court before your court appearance?"

The Winnipeg victims assistance study indicates quite clearly that the most sought-for information by both victims and witnesses is information on the criminal justice system. That victims needed such information was the commonly held view of prosecutors, police, and victim-related services such as the sexual assault centre, the transition house, Children's Aid, and the Main Street Project (a victim's assistance service).

It is clear from the research that victim/witnesses need general criminal justice information. Certainly they require this information if they are to be effective participants in the criminal justice process.

STRATEGIES FOR INFORMATION PROVISION TO VICTIMS

Victim information needs are complex and the interaction of personnel and services that are potentially involved in meeting those needs is also complex.

The information gap that presently exists between victims and services appears to be the result of the failure of any one service to accept the responsibility for informing victims of the availability of these services. In order to bridge that gap, it is recommended that different responsibilities of the various players in the system be clarified. Further, individual roles and responsibilities must be assigned, and accepted.

It would be helpful if a co-ordinated approach to meeting the victims' needs could be developed among the parties in each jurisdiction. A committee consisting of representatives from the voluntary agencies, from government departments of health and social services as well as representatives from the criminal justice system could develop and disseminate information of this kind. They could participate in the sharing of information regarding their respective roles, responsibilities and services. Exchanging information would help to identify gaps in the delivery of services, could avoid duplication of services, and could increase victims' access to state-sponsored reparation and other related services.

The composition of the co-ordinating committee would vary with each jurisdiction. The committee would, by necessity, have to examine and determine the preferred methods for the distribution of information in their area. The pamphlet, open phone line and automatic notification system were suggested and examined previously. However, client population, available funding and the perceived need for information to victims will undoubtedly comprise the primary factors to be considered in each jurisdiction. In addition to choosing the preferred method of information dissemination, it is necessary that there be a commitment on the part of all victim-related services to distribute each other's material to their clientele. A local co-ordinating committee could act in the capacity of a clearinghouse for information distribution to agencies. The clearinghouse role would help to ensure that all agencies have quantities of information available on an on-going basis for public distribution.

The Task Force recommends that:

64. Criminal justice personnel, victim-related services and relevant government departments should adopt a uniform and ongoing approach to the provision of information in respect of victims which has as its elements:

    - acceptance of a duty by criminal justice personnel and victim-related services to provide relevant information as defined above to victims as a routine and integral function of their ongoing operations;

    - acceptance of the advantages of communication and co-operation among themselves in respect of this field; and

    - acceptance of the need to change internal operations and create mechanisms to achieve the first two elements of this approach.

65. In pursuit of this approach, each provincial and territorial jurisdiction should develop a coordinating role to:

- identify and reduce gaps and duplication in meeting needs;
- develop common responses to similarly perceived needs;
- provide expertise on information design and distribution;
- ensure ongoing support for meeting victim-related information needs.

66. Information on trial date and adjournments should be made available as the case progresses.

67. Information on the disposition of the case should be provided at the conclusion of the case.

68. Prosecutors, on request, should ensure that victims are informed of the outcome of plea bargaining but retain the discretion to not inform as to the reasons for the agreement if in the public interest.

69. Information on property recovery and return should be provided as the victim requests, or in all cases at the conclusion of the case.

70. Information on release from incarceration should be provided to the victims if they have so requested.

71. Information should be provided to victims and witnesses on the criminal justice system, including:

- description of the system, roles of key players, and the criminal justice process;
- obligations and rights of victims and witnesses;
- explanation of a subpoena;
- enforcement of court orders, such as restitution orders and peace bonds.

To accomplish this, police, prosecutors, and victim-related services in each province should jointly produce and distribute a pamphlet on these items. Further, the pamphlet should be distributed with all subpoenae, and include a tear-off page for presentation by the witnesses to their employers, explaining the obligation to allow the witness to attend the trial.

72. In designing and implementing all services/materials for victims, special attention should be given to the following factors:

- the effect of victim traumatization, including: the need to make the information simple yet sufficient; the need for a pro-active approach in delivery; the need to deliver information over a period of time; the need for an empathetic, supportive approach;
- the development of material which is appropriate and accessible.

73. A federal/provincial study group should be formed to explore the establishment of a National Victims Resource Centre and that the study should examine not only the issue of the types of information which such a Centre would collect but how the information should be accessed, what would be the most appropriate method of funding, and where the Centre should be located.

74. The Canadian Centre for Justice Statistics with the support of the federal Departments of Justice and Solicitor General carry out a National Victimization Study every 5 years.

75. The Federal/Provincial Conference of Ministers responsible for Criminal Justice consider the establishment of a working group of officials to enquire into the extent to which victims have established their own system of justice to deal with certain offences and the implications of such "private justice" for the publicly controlled criminal justice system. (See Chapter 1)

LEGISLATION

To this point in the Report, the legitimate needs of the victim and the lack of services to victims have been identified and proposals have been made to improve present practices and procedures. The issue of victims' rights has not yet been addressed although the provisions of the Criminal Code which may benefit victims have been outlined.

Many advocates of victims' rights have proposed that a Code or Charter of Rights be legislated either as part of the Criminal Code or as a separate piece of legislation but several factors must be considered carefully before any action is taken in this regard. Firstly, the policy of criminal law makers as stated in The Criminal Law in Canadian Society (1982) is to reserve the use of the criminal law to deal only with that conduct for which other means of social control are inadequate or inappropriate and in a manner which interferes with individual rights and freedoms only to the extent necessary for the attainment of its purpose. Thus many advocated rights are not appropriate to be included in the criminal law. Secondly, if legislation is enacted to provide rights for crime victims, it will only include those rights which can be practically enforced and hence there will be very few victim 'rights'. Thirdly, the definition of 'right' adopted in the introduction precludes legislating many advocated rights. The key features of a right were said to include: a legal recognition of an interest; the creation of a right corelatively creates a disadvantage or duty; and the existence of a right implies a legal remedy and consequently a mechanism for securing the right or damages.

Such a definition will preclude many so-called 'rights'. To provide one example, the Criminal Code currently provides in section 653 that as part of the sentence an accused may be ordered to compensate or make restitution to the victim. The Criminal Code provides a mechanism to secure the remedy; however, where the accused has no money the compensation order cannot be paid and the victim cannot be compensated. The victim has a right to seek a compensation order but he does not have a right to compensation itself. While the Task Force believes that wherever possible specific rights which can be properly prescribed by the criminal law should be legislated, it believes them to be few in number.

There are remedies for some of the legitimate demands of victims which do not require legislation but rather can be the subject of guidelines issued by the Ministers responsible for criminal justice. For example, a victim cannot enforce any 'right' to be afforded consideration by the justice system but Ministers can establish certain policies and procedures which would materially assist in assuring victims that the system does, in fact, respect them, consider them and values their co-operation.

The Task Force believes that much can be accomplished by the issuing of Ministerial guidelines and by reshaping certain administrative procedures and practices. It has, therefore, limited the number of recommendations it has made requiring legislation to those where it is believed legislation is essential and where the rights are enforceable.

For the reader's benefit we refer them to the following recommendations found in the text which call for legislative changes.

The Task Force recommends that:

1. The Criminal Code be amended to impose a duty on police and court officials to return the victim's property as soon as possible and to impose a maximum period of detention with a procedure for extension of the period of detention only where the property may still be required as evidence.

2. The Criminal Code be amended to endorse the procedure of photographing stolen property to be used as evidence at trial where possible, so that the property can be returned to its lawful owner.

8. The Criminal Code s.653 be amended to require judges to consider restitution in all appropriate cases and to provide an opportunity to victims to make representations to the court regarding their ascertainable losses.

9. A provision be included in the Criminal Code to empower the court to impose a jail term where the accused wilfully defaults in the restitution ordered by the court.

10. The Criminal Code s.388 be amended to cover situations where the damage caused does not exceed $500, and that compensation could be ordered up to $500, instead of the present limit of $50.

21. The Criminal Code be amended to permit the introduction of a victim impact statement to be considered at the time of sentencing.

22. S. 381 of the Criminal Code which makes intimidating behaviour a summary conviction offence be amended to increase the penalty where such intimidation is practised on a victim or witness by the accused, and that consideration be given to making such conduct an indictable offence in order to reflect its serious nature.

23. The Criminal Code be amended to allow all victims to make an application for an in-camera hearing and an order prohibiting publication or broadcast of their identity. The Criminal Code should also be amended to require the judge to advise the victim of this right at the first opportunity; the presiding judge would then assess the circumstances of the particular case and the reasons of the victim before making the appropriate order.

24. The Criminal Code be amended to provide that all criminal trials and preliminary inquiries be commenced within six months from the accused's first appearance in court or the charge be dismissed for want of prosecution; the provision would allow for an extension of that period where the Court believed there to be exceptional circumstances.

CHAPTER 6

COSTS AND FUNDING

COSTS AND FUNDING

Management in an era of financial constraint confronts a series of nearly intractable problems particularly in the justice and social policy field. Problems increase both numerically and in terms of the magnitude of their perceived negative effects. Governmental priorities become realigned and only the most important problems can hope to receive attention. This process results in reassessments of needs and a resulting repositioning in the hierarchy of possible activity. This is not simply the rhetoric of hard times, it is its reality.

Shrinking resources, in real terms, create an atmosphere of panic in the 'helping agencies' and result in vigourous lobbying by interest groups who are concerned to give 'their problem' special prominence. This, in turn, makes it difficult to address problems in an appropriately dispassionate manner. In the heat of this battle there is a real danger that victims will be pushed even further into the background of the justice system, and that their needs will be even more neglected.

The recommendations found in this report have not been formulated as a series of ideals which might be considered for implementation in more prosperous times. The Task Force is of the opinion that its recommendations form the minimum programme for the improvement of a series of very serious problems; problems which must be addressed now, in spite of resource constraints.

There is no doubt that initiating or expanding services to victims will cost money. What is less certain is firstly how much money particular services will cost and secondly whether the ensuing benefits make most costs worthwhile.

There is very little information available to show that cost savings will be generated or that other benefits would outweigh the costs involved. The reason for this is that many victim programmes are relatively new and have not been fully evaluated, and in addition there are the usual difficulties encountered when attempting to research costs/benefits in programmes of this kind.

In looking outside Canada for indicators in this area it is evident that in the U.S.A. a similar situation exists. A study by the American Institute for Research undertook a national assessment of over 200 victim and/or witness assistance programmes to determine the impact of their services. In spite of certain methodological problems the researchers considered that there was reasonable support for the following conclusions:

- Witness model projects have produced clearcut time savings for police and lay witnesses, through the implementation of improved notification systems, and have saved police time in some locations by modifying the subpoena service process. Prosecutor time is also saved when projects take on notification and appearance management.
- Witness projects can probably produce modest increments (absolute increases of 10-15 percent) in witness appearance rates.
- For the most part, police and prosecutor time savings from witness projects free system resources for alternate use rather than producing direct dollar savings.

Costs of certain programmes are not difficult to obtain, e.g., Criminal Injuries Compensation programmes, and close estimates of others can be arrived at without great difficulty, e.g., Transition Houses. It is difficult, however, to place even an estimate on the costs of services which are not provided by an independent single-focus agency but are 'add-ons' to the workers in an existing agency or institution.

From one location to another there are variations on operating costs depending upon such factors as the number and type of paid staff, the extent to which volunteers are used, the range of service provided, the location of the programme and so on.

There is also no doubt that some services can be provided at relatively little or no cost. On the other hand if a decision were made, for example, to substantially increase the amounts paid out through Criminal Injuries Compensation awards, then equally substantial revenue would have to be found and no doubt found from new sources.

In the absence of detailed and nationwide data the Task Force believed that it could best illustrate the range of costs which could be involved by supplying information on a sample of different programmes or different models of the same programme. This inventory (Appendix II) includes only a few examples of different kinds of programmes selected at random.

FUNDING OPTIONS

General Revenue

The majority of victim services in Canada receive full or partial financial support from general revenues obtained from federal, provincial and municipal taxes.

Victim Assistance Programmes are often funded on a pilot project basis with financial support from all three levels of government. Sexual Assault crisis centres and homes for battered women often receive some financial assistance from the Canada Assistance Plan, a cost-shared programme between the provinces and the Department of Health and Welfare. Criminal Injuries Compensation, which provides financial compensation to injured victims, is also a cost-shared program between the federal Department of Justice and provincial or territorial governments. In addition, health and welfare assistance schemes, such as health care or the Canada Pension Plan, provide victims of crime in Canada with universal medical care, and a range of pensions and benefits to victims and their beneficiaries.

The specific concern for the plight of victims and witnesses, the public's desire that something should be done about crime, the interest of members of the public and private agencies in maintaining their territory, and the Justice system's interest in cheaper and more efficient proceedings are some of the factors competing for attention for funds from general revenue. The obvious problem is the very real possibility that the plight of victims and witnesses will continue to go unrecognized and their needs will continue to receive a low priority.

Clearly, pressures on resources in a climate of fiscal restraint bear heavily on criminal justice agencies which are especially labour-intensive in nature. Nevertheless, pressures to cut back run squarely against public demands for better protection, rights and services. If action in response to crime is seen to be the responsibility of all citizens, it could be argued that we all have an obligation to bear the responsibility of the effects of crime.

Social justice requires that some sort of effort be made by society to ensure that the physical, medical, financial and psychological needs created by victimization be met. In terms of choices the first political decision will be to determine the relative priority of any victim assistance programme vis-a-vis all other programmes and social services. And the second decision will clearly involve the relative priority of one particular kind of victim service over another.

Special Revenue

A special tax on all individuals with monies specifically earmarked for crime victim services could provide an additional source of funding and a possible alternative to financing victim services from general revenue.

The most obvious advantage of a special tax is that it would generate substantial revenue for victim services. For example, according to Taxation Canada, 14 800 149 individuals filed federal income tax forms in 1981. A $5 special victim tax would generate $74 000 745.

Such a funding option has certain obvious limitations. In times of recession a tax increase for a particular purpose may be politically unacceptable and the funding of programmes for victims of crime would have to be given a priority over spending in areas such as medical or dental care, education or defence.

Special Levy

In some American states a levy has been placed on already existing licence fees with the funds earmarked for certain services. The most common example of this type of special levy is the imposition of a surcharge on marriage licences and a filing fee on divorce applications, with the funds specifically directed to transition houses and programmes for battered women and their children.

Fourteen American states have legislation which authorizes a surcharge on marriage licences and three states have, in addition, imposed a filing fee on divorce applications. The surcharge that is imposed usually varies from $5 to $20. The additional revenue is deposited in the state treasury and then administered by a state agency. Usually a board, composed of government representatives and community workers is organized to receive applications and allocate funds.

Marriage and divorce statistics in Canada indicate that a special levy would generate significant additional funding for transition houses. For example, a $5 surcharge on all marriage licences issued in Canada in 1981 would have generated $908 050. A more liberal $20 surcharge would have resulted in $3 632 300 additional funds.

Similarly a $5 surcharge on divorce applications filed in 1981 in Canada would have generated $403 905 and a $20 surcharge would have generated $1 615 620. Such additional funds would clearly supplement existing financial resources which are now considered inadequate to effectively operate transition houses in Canada.

In the United States there has been little opposition to the special levy on marriage licences, but the concept of a filing fee on divorce applications has received much less support. In Canada a designated tax, i.e., one created with funds earmarked for a specific purpose has not generally been welcomed.

Fines

The Law Reform Commission of Canada in its working paper on fines recommended that revenue from fines collected as criminal sanctions should flow into a fund for compensation to victims of crime. Revenue from fines, all or in part, could be diverted from consolidated revenue to meet victim needs.

In this way the initial source of funds to compensate victims and meet their needs would come from those who commit criminal offences. Any supplementary funding could come from federal or provincial treasuries. This method of financing victim services would serve as a highly visible reminder that when crime occurs, a debt is owed not only to society but to the individual victim.

Although statistics were not available from three jurisdictions in Canada the data from the remaining nine indicate that substantial funds would be made available for victim services if monies from all fines were reserved for this purpose. For example, in the fiscal year 1981-82 a total of $141 525 063 was payable to the provincial, federal and municipal governments from fine revenues. Since not all fines are imposed on offences which involve a victim, it may be more appropriate to divert only the revenue from 'victim-related' offences.

Thus, to finance compensation schemes and/or victim services, one could reserve all revenue from fines collected as criminal sanctions, divert only the revenue from fines imposed on 'victim-related' offences, or take some portion of all fines collected and set these funds aside for victim programmes.

To adopt any of these alternatives would result, of course, in a decrease in general revenue for the governments. This decrease could be offset, however, by raising the present minimum and maximum fine tariffs which were established long before the onset of inflation and rising costs. Moreover, a similar step could be taken with court costs, the amount of which bears no relation at all to the actual costs involved. In Ontario, for example, there is a cost of $3 in each case. While that amount may have had some relevance when it was established it is no more than a token to-day.

Fine Surtax

A number of American states have imposed an additional surtax on convicted offenders to generate funds for victim services. This surtax may take several forms. One form is to impose a percentage surtax in addition to a fine, or forfeiture of bail. Another is to impose a penalty or court cost in addition to other penalties. A third is to impose a compensatory fine in addition to other penalties.

The fine surtax has been justified on the grounds that it places more responsibility on the offender to provide the funding to support services to victims. Since offenders are the individuals who actually cause the victim's emotional, physical and financial suffering, it can be argued that it is they who bear a special responsibility for easing the victim's plight.

In most jurisdictions in the United States which have a fine surtax system these funds are applied directly to meet the needs of victims through criminal injuries compensation boards and/or through state victim funding agencies. Some states restrict the penalty to major offences while others include minor offences. Some exclude and some include traffic violations. Where the surtax is a fixed amount, that amount differs from one state to another ranging from $1 - $50. Where there is no fixed amount the surtax falls within a range determined by the state, e.g., in California a crime involving violence can be surtaxed up to $10 000.

One obvious advantage of adopting a fine surtax scheme is that it would create an additional source of funding for victim services, and the added revenue would be substantial. In Ontario alone in 1981-82 there were 218 153 Criminal Code and federal statute convictions. A $10 surtax imposed on each conviction would generate $2 181 530 in additional revenue.

Concerns were raised regarding the wisdom and justice of imposing an additional penalty on convicted offenders in Canada. Some would argue that a mandatory surtax for a fixed amount would interfere with judicial discretion but if this is the case it can be countered by making the amount variable as certain states have done. It is also contended by some that one group of offenders should not be held responsible for the harm caused by another, e.g., the offender in a victimless crime should not be expected to help pay for the suffering of victims of other offences. To counter this viewpoint it is argued our present system is based upon the belief that any crime is an offence against society as a whole. It is the fact that a crime has been committed and society has, to whatever degree, been weakened by that commission that argues for all offenders contributing in some measure. If the legal fiction is to be maintained the 'victim' in a victimless crime is society itself.

Yet another concern is whether the imposition of some form of surtax in addition to whatever penalty would normally be imposed would run counter to the Charter of Rights and Freedoms. It is not the impression of the Task Force that this would be the case but it is accepted that an argument could no doubt be developed on those lines.

Diversion of Prison Revenue

A deduction from inmates' pay may be feasible but not necessarily desirable. The money an offender earns from employment within an institution acts as an incentive to be productive, and wages earned in prison are often used to support the offender's family and to help him reintegrate into society upon release. Since it is in the best interest of all victims to have the offender become a productive and law-abiding citizen, nothing should be done which may mitigate against this objective; all other means of reparation should be explored fully before one which may do little to make good the victim's loss but do much to discourage the offender's attempt at rehabilitation.

The option to divert prison revenues also appears to be questionable. First, the majority of provinces do not have prison revenues. Most provinces do not operate commercial industries, but rather employ inmates in maintenance activities, education and training programmes. Second, prison industries that do exist appear to generate relatively little in terms of profit or revenue.

Notwithstanding the above it should be noted that many provincial inmates who work in the community on a temporary absence pass do pay restitution to their victims. Others could conceivably contribute money toward the funding of crime victim services.

'Son of Sam' Legislation

Although victims have always had the option of bringing a civil suit against the offender to collect damages, they rarely do. Offenders are more often than not 'judgement-proof'. A particular problem is posed by the offender who may be judgement-proof at the time of trial but subsequently publishes his memoirs and profits from the sale. Following the Son-of-Sam killings in the United States, the State of New York in 1977 enacted legislation to prevent a criminal profiting from his story and during the past five years other states have followed suit.

Generally, this legislation puts the onus on the legal entity contracting with the accused or convicted person to submit a copy of the contract to the State Crime Victim Compensation Board. Profits made by a defendant in capitalizing on his story are placed in an escrow account by the Board, and are distributed according to established priorities: to pay, for example, for the legal representation of the accused; any subrogation claims made by the state; any civil judgements made in favour of the victim of the crime; certain debts to other creditors, including taxing authorities; to assist the crime victim compensation funds and, in some states, to return the remainder to the person accused or convicted of the crime.

Steps have recently been taken at the U.S. federal level to ensure that the victim's interest is no longer overlooked. The Omnibus Victims Protection Act 1982 requires the Attorney General to report to Congress regarding necessary legislation to ensure that a federal offender does not profit from the story of his crime until after any victim of the offence has received restitution.

If similar legislation were to be adopted in Canada, a number of constitutional and legal issues, including questions of jurisdiction, freedom of speech, and freedom of the press would need to be examined. Studies are under way at the present time in both provincial and federal jurisdictions.

Experience in the United States would indicate that, while this type of legislation enables the victim to have access to funds from criminals-turned-authors, there are relatively few cases where a convicted offender generates funds through publicizing his crime. Further, the administrative costs appear to be approximately equal to the amount of money the Boards recover through subrogation. As a funding option for victims services, escrow legislation does not look particularly promising.

Criminal Bankruptcy

The use of criminal bankruptcy proceedings to gain access to the assets of offenders was first recommended by the British Law Society in 1965. These recommendations became provisions in the 1972 Criminal Justice Act, which established criminal bankruptcy in Great Britain on an experimental basis.

Under that legislation the court is allowed, in addition to any other sentence, to make a criminal bankruptcy order against a person convicted of an offence where:

- there has been a loss or damage (not attributable to personal injury) suffered by one or more persons whose identity is known to the court; and
- the amount or aggregate amount of loss or damage exceeds 15 000 pounds or approximately $30 000.

Before a bankruptcy petition is made, consideration is given to whether the offender has sufficient assets to make such procedures worthwhile, and to whether it is in the public's interest to proceed, i.e., such proceedings may cause severe hardship to the criminal bankrupt's family. If a petition is presented, a receiving order may be made and the normal bankruptcy procedures follow. The convicted person is then treated as a debtor who has committed an act of bankruptcy and the person specified in the order as having suffered loss or damage as the creditor.

A Home Office study concluded that criminal bankruptcy was a very expensive procedure which provided a very small number of victims with a very small return at considerable public expense. Further studies have shown that the major creditors are not private individuals but commercial bodies or insurance companies.

Opponents of criminal bankruptcy are critical of the fact that such proceedings make bankruptcy an arm of the criminal law, when the trend has been to decriminalize bankruptcy procedures and assert that criminal bankruptcy is a misuse of bankruptcy powers when the debtor is not insolvent. As a reparative sanction for victims, criminal bankruptcy procedures are thought to be less effective than restitution, state compensation, and civil action.

As an alternative, the Canadian Study Committee on Bankruptcy and Insolvency Legislation in 1970 recommended that S. 653 of the Criminal Code be amended to facilitate the liquidation of claims. Accordingly, the Committee felt that there was no reason why a criminal court upon the request of a victim could not be required to make an estimate of the value of the unliquidated claim against the criminal, instead of requiring it to find the actual amount of damages suffered. If the criminal does not then pay to the court the amount of the estimate or give security for the same, this fact could be used as a presumption of insolvency in the bankruptcy process.

Rights of Subrogation

Currently in Canada Criminal Injuries Compensation Boards have the right to subrogate the victim's right to take civil action against the convicted offender to recover monies for loss or damages. Generally, the Boards have met with little success in recovering the loss from the offender.

The right to subrogation is now restricted to the Criminal Injuries Compensation Boards. It can be argued, however, that this right should be expanded to allow governments to recover losses incurred in providing other government-funded services, such as sexual assault crisis centres, transition houses or victim assistance programmes.

If such a right were to be expanded, a number of procedural issues would need to be examined including which agency should exercise this right of subrogation. One might suggest that the Provincial Attorney General's office take on such a role due to its expertise in the area. Second, one must determine what should be done with the recovered funds. Monies could be diverted, for example, to the government department which provided the service or to a state victim funding agency. The last option has the advantage of ensuring that the funds would be used to meet victim needs.

An expanded model of state subrogation would be unlikely to generate much additional revenue for funding victim services. Few offenders have sufficient assets to make civil actions worthwhile, and additional monies recovered although subrogation may well be offset by administrative costs.

Tax Deduction for Crime-Related Loss

The United States' Federal Income Revenue Code allows a tax deduction for 'casualty' losses, including theft.* This tax deduction applies to those who do not have insurance and who have suffered a loss greater than $100. An applicant may deduct the amount of the loss minus 10% of his adjusted gross income in excess of $100.

The tax deduction provides some relief to those victims who suffer property loss and have no other means of compensation. The applicant usually relies on the police report of the investigation to prove that a theft actually occurred. To some extent tax deduction provisions may result in increased crime reporting.

It should be noted that such tax deductions provide little benefit to the economically disadvantaged. If a victim has a low income, other standard deductions would reduce his or her taxable income to zero, and a deduction for crime-related losses would be meaningless. Further, if applicants must first deduct 10% of their adjusted gross income before making a deduction in excess of $100, the deduction could be reduced to zero.

* Kidnapping for ransom, theft by false pretenses, burglary, blackmail and extortion also contribute to theft.

The United States' tax deduction provision does not, of course, generate new funds for victim services. The provision is restricted to a 'tax break' for certain victims who are not covered by insurance and who have lost over $100 as a result of theft.

Assistance to victims of property crime could also be provided by a government subsidized insurance program. In certain locations in the United States, the Department of Housing and Urban Development provides insurance at lower rates to those who cannot afford regular coverage or cannot obtain insurance because of their high risk of victimization.

Administrative Structures for Funding Victim/Witness Assistance

If additional funds are generated for crime victim services, some co-ordinating mechanism for distributing and managing them is essential. The administration of new funds is just as important as the creation of funds whether it means creating a new agency or adopting certain procedures within existing agencies.

The State of California provides a good example of the latter. Money from all sources, including general revenue, fines and fine surtax, is deposited in an indemnity fund in the State treasury. The proceeds are then available for appropriation by the Legislature for funding the State's Criminal Injuries Compensation Programme and programmes that assist victims and witnesses. The Office of Criminal Justice Planning accepts applications for funding and determines whether funds should be granted. If funds are granted, appraisals are carried out to determine whether continued support should be provided. In the first 6 months of 1982, $10 million was appropriated for the funding of victim programmes.

It is our understanding that in France the Ministry of Justice is establishing similar procedures following the recommendation of the *Rapport de la commission d'étude et de propositions dans le domaine de l'aide aux victimes.*

The central administration of such a fund simplifies the task of co-ordinating various victim programmes, setting standards, monitoring results, avoiding duplication of services, and assessing and planning for future needs. The functions of a central co-ordinating body could be administered in a number of ways, for example, by the planning department of an existing ministry, by the existing criminal injuries compensation boards in each jurisdiction, or by interdepartmental working groups at both federal and provincial levels.

Summary

This examination of the victim within the criminal justice system has led to the Report recommending that certain support and information services be developed and others, for example Criminal Injuries Compensation, be expanded. If these recommendations are accepted then those services will need to be funded.

It cannot be assumed that new large-scale resources are likely to become available from within present government revenues even though many believe that those charged with the task of ensuring that the law is enforced and that justice is administered are presently underfunded. Ensuring the safety and the protection of the public and the just administration of the law is almost an impossible task when the public funds provided for that purpose constitute only 4% of a government's budget. Unfortunately, there is apparently little prospect of change until the backlog in the courts, the increase in crime, or the overcrowding of institutions reaches a point at which the public makes evident its dissatisfaction.

Given this to be the case only three possibilities remain. Either new sources of funding similar to those outlined must be found, or monies must be found from within the existing appropriations of those Departments and Ministries concerned, or both of these avenues must be explored.

While the funding options which have been outlined possess certain attractions each suffers from one disadvantage or another. Some would produce relatively little in terms of net revenue; some would be impractical from an administrative viewpoint; others would appear to penalize the public at large rather than the offender in particular. This last point is arguable, of course: if one considers that a crime is an action against the whole of society and it is believed that crime is a responsibility of all citizens, then all should bear the costs of its impact.

The Task Force believes that despite the concerns which have been expressed regarding its application, the concept of a fine surtax holds promise.

Furthermore, it is of the opinion that the present minimum and maximum limits on fines should be adjusted to reflect to-day's prices. An upward revision could produce sufficient revenue to fund many of the services we have described. In addition, the Task Force believes that all jurisdictions should closely examine their present ordering of priorities in an attempt to find additional funding for victim services.

The Task Force recommends that:

76. The use of a fine surtax to generate funds for victim services within each province should be explored by Provincial Attorneys General; this would entail a fixed penalty being imposed in addition to the sentence or penalty otherwise imposed by the judge upon conviction for a summary conviction or an indictable offence.

77. All minimum and maximum limits on fines should be upwardly adjusted to reflect to-day's cost of living.

78. The additional revenue collected through the imposition of the two previous recommendations should be earmarked to fund services to victims of crime.

79. The progress of all jurisdictions in attempting to implement those recommendations in this Report which are accepted by the Federal Provincial Committee of Ministers should be monitored over a period of two years by a small federal/provincial working group which shall report back to the Committee of Ministers.

PART IV

CONCLUSION AND RECOMMENDATIONS

CONCLUSION

CONCLUSION

The mandate of the justice system to protect society and to deal with offenders, and the limited financial and human resources assigned to this task, have sometimes resulted in practices which neglect the needs and concerns of victims of crime. The Report has attempted to examine the ability of the system to respond to these concerns without compromising its basic aims and to ascertain whether that response can be achieved at limited cost.

The Task Force not only believes that the system has that ability but also that the majority of the concerns expressed can be satisfied without creating new service networks or building bigger bureaucracies. In many instances, simple changes in existing practices within the justice system itself would be sufficient to produce the desired results. For instance, it is significant that the most frequently expressed need by the great majority of victims interviewed is the need for information. To meet this need, it is not new services which are required, but a firm commitment on the part of the various criminal justice officials to let the victims know what is happening to 'their' case.

To take another example, victims need to feel that their viewpoint has been taken into consideration and to be assured that the impact of the crime upon them is properly considered by the system's decision-makers. Again, this is not a need that can only be met by a new bureaucracy. It is one to which a response can be made now by those justice officials who are given the responsibility for decisions in a particular case. They should do so in the normal course of their activities.

Where the findings of empirical studies conducted in Canadian jurisdictions were available to the Task Force, it was clear that certain practices within the criminal justice system should be re-examined in light of the new awareness of victims' needs.

Any attempt to review thoroughly all practices and procedures within the system would not only be a very time-consuming task, it would also be extremely complicated because systematic data on the numerous practices and their impact on victims are not, as a rule, available, and the practices are not uniform within Canada, or even within a given jurisdiction.

Faced with this fact the Task Force did not undertake such a review; instead it identified those factors, legal or structural, which could perhaps be responsible for the fact that many practices neglect the concerns of the victims, or compound the consequences of victimization. Surprisingly, although some 'systemic' difficulties could be identified, the difficulties with those practices resulted more often from attitudes, customs and habits, than from the contingencies of the justice system itself.

In making useful recommendations relating to these practices and how they could be made more responsive to the needs and concerns of victims, two other hurdles had to be overcome.

In the case of many of those practices which may affect the victim, the choice often had to be made between a very general recommendation, e.g., 'seized property should be returned as quickly as possible', or a very specific one, e.g., 'in those cases where children are asked to come to court to testify, the court should provide a children's washroom'. In the first case, there is the risk of making recommendations that would perhaps amount to nothing more than a pious hope. This would not offer any real assistance to those officials who are already looking for practical solutions. In the second case, there is the risk of making recommendations which would be an insult to officials who, in their own area of responsibility, have already arrived at solutions which may be better adapted to their own needs. Finally, recommendations which go into too much detail, even if they could sometimes serve as examples, can create unnecessary confusion when it comes to priorizing the various steps to be taken to respond to the needs of victims.

The second hurdle was that of overcoming the temptation to recommend that those local programmes which have produced interesting and important results should be replicated in 'every' jurisdiction. Every effort was made to by-pass this obstacle, and only on rare occasions was the effort unsuccessful.

For these reasons an attempt has been made to concentrate our recommendations either on those practices which were sufficiently uniform across Canada, or on those which could not be improved to meet the victim's needs without either a legislative reform or a formal policy revision. As for the many other practices and gaps in service which may create problems for victims and which were discussed in a previous chapter, the experience accumulated so far by many Canadian jurisdictions demonstrates that the problems can be identified and solved by a concerted effort of the various justice officials at the local level.

That experience indicates that the keynote of success was the determination of local officials to work together to review their practices and their impact on victims. Furthermore, sometimes to the surprise of the officials who took part in these endeavours, all of these attempts seem to have produced direct benefits not only for victims, but also for the criminal justice agencies themselves, e.g., greater efficiency, cost savings, better co-operation from the victim and/or the public, etc.

It is perhaps significant that the Victims Committee of the American Bar Association, when it proposed guidelines for the fair treatment of victims and witnesses in the criminal justice system, suggested mainly those which aimed at improving communication between the victims and the justice system's decision-makers. The guidelines were primarily concerned with information to be given to the victim at various stages of the criminal justice process, or with ways in which victims could communicate more freely and more directly their experience to those officials (e.g., a victim impact statement). Communication is largely a matter of attitude and practices. This is further evidenced by the fact that the Committee in question did not find any legal or structural reasons for the state of poor communication between victims and justice officials, but simply a set of practices which seemed to have been dictated by considerations in which a genuine concern for the situation of the victim was not always included.

The key words are concern, consideration, and communication. Victims have concerns; they are entitled to consideration; and the fact that they are being considered and not neglected must be communicated to them. No matter how worthwhile any recommendation may prove to be, what will make it work for victims will be the attitudes of those who bear the responsibility for its day-to-day implementation. If the will exists to do these things, they will be done.

Finally the Task Force offers the following comment upon the structure of Canada's system of justice.

There are those who maintain that only a radical realignment of the respective interests of all the principal actors in the process can truly ensure justice for the victims of crime. They call, for example, for the victim to be acknowledged as being a party to proceedings, to be provided with complete access to all information on the case and the offender, and to be supplied with the reasons for any and every decision taken by officials at any point in the process. They question the discretionary powers presently vested in officials, the manner in which those powers are exercised and whether there are sufficient checks and balances on those powers. They also point to what they perceive to be an antiquated and unjustifiable demarcation between the civil and the criminal process.

Given the scope of the Task Force's mandate it was essential that this viewpoint be discussed; given the various perspectives of the Task Force members it was inevitable that the discussion would be inconclusive. What was abundantly clear was that many questions need to be answered beyond the very obvious ones of whether the majority of victims would desire such a role and whether, if they did, they may find that they would lose as much as they would gain.

Alternative structures and mechanisms should certainly be explored and the system should adapt to changing needs and demands without sacrificing its integrity. That adaptation, however, should be arrived at with every caution: justice is concerned daily with the issue of individual freedom and that is a commodity which must never be jeopardized by innovations which may promise much but may result in confusion and inequity. What is at issue is whether an attempt should be made to re-conceptualize the goals and purposes of the administration of justice in Canada and clearly that is an issue which lies outside the mandate of this Task Force.

SUMMARY OF RECOMMENDATIONS

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Prompt Return of Property

1. The Criminal Code be amended to impose a duty on police and court officials to return the victim's property as soon as possible and to impose a maximum period of detention with a procedure for extension of the period of detention only where the property may still be required as evidence.

2. The Criminal Code be amended to endorse the procedure of photographing stolen property to be used as evidence at trial where possible, so that the property can be returned to its lawful owner.

3. Police forces should consider the adoption of programmes similar to or modelled on the Edmonton system of early property return to victims of theft.

4. Victims should not be placed in a position where they must repay pawnbrokers in order to speed the recovery of their property; the remedy of the pawnbrokers is against the accused or the person having sold the property and not against the victim. Similarly, the current practice of some police forces of withholding stolen property until the ticket disbursement has been paid by the victim to the pawnbroker should cease.

5. Police departments should make every effort to minimize the delay which occurs between an insurance company's request for a police report and the receipt of that report. It is acknowledged that an increase in charges for preparing such reports may be necessary to facilitate this proposal.

6. Ministers responsible for supervising the insurance industry should ask the industry to make a concerted effort to ensure that all insurance companies provide detailed information on the actual nature of their policies relating to claims for the theft of property; the co-operation of the Insurance Bureau of Canada should be sought in this regard.

7. Police departments and the insurance industry should further increase their efforts to inform the public of the existence, purpose and methods of Operation Identification and of the ease with which property can be marked for identification;

the employment of summer students to mark and identify property appears to hold promise for expanding the use of this service.

Restitution

8. The Criminal Code s.653 be amended to require judges to consider restitution in all appropriate cases and to provide an opportunity to victims to make representations to the court regarding their ascertainable losses.

9. A provision should be included in the Criminal Code to empower the court to impose a jail term where the accused wilfully defaults in the restitution ordered by the court.

10. The Criminal Code s. 388 be amended to cover situations where the damage caused does not exceed $500, and that compensation could be ordered up to $500, instead of the present limit of $50.

11. All Ministers responsible for Criminal Justice examine the extent to which increased support could be given to research enquiring into the various effects of different sentences, and different forms of sentence, upon offenders.

Criminal Injuries Compensation

12. An examination of the humanitarian vs. insurance methods of operating and funding Crime Compensation programmes should be undertaken by a Federal/Provincial working group and a full exploration of the costs/benefits of the New Zealand programme should be incorporated into that examination.

13. There should be an increase in the amount of funding provided by federal and provincial bodies to the programmes, since in general the awards only go a modest way to providing full compensation for the losses suffered.

14. In all jurisdictions where maximum limits on awards are imposed, the calculation of loss should follow the procedures of firstly, determining the loss; secondly, deducting any collateral benefits, excepting welfare payments; and thirdly, subjecting the amount to the maximum limit.

15. In all jurisdictions where maximum limits on awards are imposed, those limits should be reviewed regularly to ensure that they keep pace with the cost of living.

16. A campaign should be launched in each jurisdiction to acquaint citizens as fully as possible with the existence of Criminal Injury Compensation Boards and their purpose. The police should be required to provide victims of crime with information on the existence and purpose of the Boards. Hospitals and other institutions and agencies should be urged to support the police in doing so.

17. Further efforts should be made to achieve reciprocity between Canadian and other jurisdictions which operate criminal injuries compensation schemes, with particular reference to the U.S.A.

18. Jurisdictions which presently do not encourage and/or welcome the personal attendance of applicants at crime compensation hearings should be requested to re-examine their practice in the light of the experienced benefits for victims of such hearings.

19. The requirement that Good Samaritans be acting 'lawfully' in order to claim compensation should be changed to 'acting in good faith' in both legislation and practice.

20. Jurisdictions which presently do not make awards for pain and suffering to the primary victim and/or awards for mental and nervous shock to a victim's dependants should be requested to re-examine their rationale for not doing so.

Victim Impact Statement

21. The Criminal Code be amended to permit the introduction of a victim impact statement to be considered at the time of sentencing.

Protection from Intimidation

22. S. 381 of the Criminal Code which makes intimidating behaviour a summary conviction offence be amended to increase the penalty where such intimidation is practised on a victim or witness by the accused, and that consideration be given to making such conduct an indictable offence in order to reflect its serious nature.

In-Camera Hearings

23. The Criminal Code be amended to allow all victims to make an application for an in-camera hearing and an order prohibiting publication or broadcast of their identity. The Criminal Code should also be amended to require the judge to advise the victim of this right at the first opportunity; the presiding judge would then

assess the circumstances of the particular case and the reasons of the victim before making the appropriate order.

Trial Within a Reasonable Time

24. The Criminal Code be amended to provide that all criminal trials and preliminary inquiries be commenced within six months from the accused's first appearance in court or the charge be dismissed for want of prosecution; the provision would allow for an extension of that period where the Court believed there to be exceptional circumstances.

General Services

25. Every effort should be made by the various Ministries involved to meet the needs of victims and witnesses and that particular consideration be given to:
    - providing practical assistance and advice to victims on such matters as replacing locks, emergency property repair, transportation, and shelter;
    - providing emergency financial aid which could be available from the police through special arrangements with welfare services;
    - providing crisis counselling to victims and their families either by responding police officers, other professionals or trained volunteers;
    - ensuring that police officers minimize the risk of intimidation to victims and witnesses;
    - providing training programmes for all police officers to sensitize them to the needs of victims and witnesses, and to ensure their awareness of available community services;
    - assisting victims to minimize the likelihood of the recurrence of the offence by advising them what preventive action could be taken.

The Elderly

26. The design of all victim services should ensure that special efforts are made to meet the financial, emotional and practical needs of elderly victims (both direct and indirect needs).

27. Services should be offered in a pro-active or outreach manner by contacting elderly victims,

rather than relying on referrals from others or on requiring the victims to request the services.

28. The provision of crime prevention services should be part of any special programme to assist elderly victims since the fear of crime is a major problem for elderly citizens.

Children

29. Local child welfare, education and justice system authorities should cooperatively and actively promote positive parenting courses and parenting support systems geared to the needs of special target groups such as: abuse victims themselves, and former abuse victims; teenage parents; children living in homes where wife assault occurs; isolated rural communities, etc.

30. Welfare, education and justice system authorities should cooperate in developing and promoting public education materials which address issues of violence, abuse, and pornography in society at large.

31. Local awareness programs and intervention protocols should be developed and promoted and more use should be made of information kits on child abuse similar to that devised by SPAR/United Way in Vancouver on Child Sexual Abuse which provides highly relevant and practical information for the wide range of workers who are most likely to be involved in the discovery and initial intervention in cases of abuse. This is necessary because children who have been sexually abused are frequently too afraid or ashamed to tell anyone, do not have the necessary degree of assertiveness which might offer increased personal safety, or are simply not taken seriously.

32. All jurisdictions should ensure that children who are victims/witnesses are represented in those cases where they will be directly affected by any disposition made by the court.

33. Parents, guardians and child protection agencies should be encouraged to apply for monetary compensation in all cases where serious physical or emotional injury has occurred; guidelines should be established regarding payment and legal control of monies paid to child victims as the result of restitution orders, civil action or criminal justice compensation awards.

Assaulted Wives

34. Written guidelines should be developed which emphasize that wife assault is a criminal offence and should be dealt with as such; the guidelines should state the criteria for law enforcement officers and prosecutors to consider in deciding whether to lay charges and make arrests in assault cases; the guidelines should advise specifically against basing decisions about charging or arresting on the officers' perceptions of the victims' wishes or the likely action of prosecutors or the courts.

35. A comprehensive police training manual should be produced for use by officers and it should include, but not be limited to, providing police officers with current information about the nature of wife assault, the needs of wife assault victims, the changing police role in responding to wife assault, relevant sections of the Criminal Code, and the importance of making referrals to community services.

36. Police officers should respond to all wife assault calls by attending the scene and should keep records on all calls regardless of whether they lay a charge or make an arrest.

37. Police record-keeping systems should permit officers responding to each call to know whether there has been a history of assault, the nature of previous incidents, and whether weapons have been involved. The relationship between the victim and assailant should be indicated on all occurrence reports and charge sheets.

38. All Canadian police education and training centres should offer a course on family violence with an emphasis on wife assault and these courses should be developed with assistance from people in the community who provide services to wife assault victims.

39. All current court orders which prevent a man from seeing or harassing his spouse should be enforced by all police forces.

40. Police forces should institute domestic crisis intervention teams in collaboration with social and mental health services. These teams should be used in addition to, not as a substitute for, laying charges and making arrests where grounds exist for these actions.

41. Police officers should make every reasonable effort to provide or arrange for transportation for assaulted wives and their children when the victims seek shelter outside the family residence.

42. Court orders providing protection for the physical safety of wife assault victims and their children should be obtainable expeditiously.

43. The Ministers responsible for social services in all jurisdictions should:

    a) Review, with the aid of representatives from transition houses, the kinds of services for assaulted wives and their children which are provided by transition house staff and the funding problems which inhibit the creation and jeopardize the maintenance of emergency shelters for assaulted wives across Canada;

    b) Draft a funding agreement that would ensure capital and operating costs are adequately met for houses providing emergency shelter for assaulted wives and their children as well as for necessary support services; start-up grants should be available for emergency shelters and second-stage housing where such facilities are required but do not exist.

    c) Review alternative means of providing protection and services to special groups of wife assault victims including rural, native, immigrant women, and women of language minorities.

44. Ministers responsible for housing in each jurisdiction should ensure that wife assault victims and their children have greater access to subsidized housing units as emergency shelters, second-stage housing and permanent housing.

45. Programmes for research and demonstration projects within Health and Welfare Canada, and the federal Departments of Justice and Solicitor General should provide funds for the development and assessment of counselling services for abusing spouses; the services should be available as sentencing options for the Court and for referrals from other court officials.

46. The National Clearing House on Family Violence should continue to provide information on wife assault issues and the kinds of services that community groups may choose to establish to help meet the needs of wife assault victims, children from violent homes and abusing spouses.

47. Police departments should be urged to assist in providing information to the public about wife assault and the legal and social service options available to victims.

48. Provincial Ministries of Education should consider incorporating materials on family violence and wife assault into appropriate school curricula.

49. Research should be conducted on decision-making in wife assault cases at various stages in the criminal justice system and on the effectiveness of different dispositions for preventing further violence.

Sexual Assault Victims

50. All police departments should implement special training programs to sensitize officers to the needs of sexual assault victims.

51. Special training and procedures should be implemented in hospitals to ensure that prompt and sensitive care is provided in order to deal with the possibilities of emotional shock, internal injuries, pregnancy, and venereal disease, and to ensure that reliable forensic evidence is collected to facilitate successful investigations and prosecutions.

52. All hospitals should use a standardized sexual assault evidence kit such as that developed by the Province of Ontario.

53. Responding police officers and hospital staff and other local victim assistance services should make special efforts to ensure that the sexual assault victim's practical and emotional needs for crisis counselling are satisfied.

54. Ministers of Welfare and local welfare authorities should encourage communities through the provision of subsidies to establish 24-hour hotline telephone services in order to provide information and emergency crisis counselling.

55. Police departments should review their procedures for deciding whether cases are 'unfounded'; it is important to establish whether this may in some cases be due to inappropriate police investigation practices or to the lack of support services to the victims.

56. Although recent Criminal Code amendments (Bill C-127) should help to reduce some of the humiliation and emotional stress of having to testify in court, prosecution and court practices should be examined at the local level to determine practical steps that might be taken to improve their assistance to sexual assault victims.

Native Victims

57. The Federal Department of Justice in consultation with provinces and native organizations should develop public legal education and information programs specifically addressed to informing native victims of criminal justice processes.

58. Existing organizations such as Special Constables, Native Friendship Centres, Native Courtworkers and Band Social Workers should be encouraged to develop services for victims with special attention being given to problems which appear to be more pronounced for natives; it is important that these services should wherever possible be planned and administered by native persons themselves.

59. Special consideration should be given to reducing problems associated with the heavy workloads and time delays of circuit courts in isolated native communities. Time delays and the inability of Crown prosecutors to contact victim witnesses in advance lead many victims to withdraw their complaints.

60. All jurisdictions should encourage and support the collection of data on the nature and extent of victimization among native peopies.

Families of Homicide Victims

61. All police departments should develop explicit guidelines and training programmes governing procedures to be used for death notifications to next of kin. Special consideration should be given to having special officers assigned to this duty based on their training, experience and personal suitability. Means should be developed for ensuring that immediate and long-term counselling and support is provided

from local victim assistance programmes and/or social and mental health agencies.

62. Police departments in conjunction with local victim assistance programmes should ensure that families of homicide victims are provided information on the availability of services, on criminal justice procedures, and practical help in dealing with the Coroner's office and in making funeral arrangements. Practical and if necessary financial assistance also should be considered in these cases where family members have to go to other provinces or countries for court appearances or to bring the body of the victim home.

63. Counselling should be offered to family members. Families of homicide victims often feel intense anger and frustration with the way the criminal justice system deals with the case. Some of these reactions could be minimized by having the police and judiciary adopt certain practices (e.g., providing more information on the status of the case; having the police personally continue to contact the family to show concern and check for long-term needs; having Crown Counsels brief family members on pleas and court procedures, and discussing in advance if particular evidence which will be upsetting to family members, such as photographs of the victim, is to be presented in court.)

Information

64. Criminal justice personnel, victim-related services and relevant government departments should adopt a uniform and ongoing approach to the provision of information in respect of victims which has as its elements:

- acceptance of a duty by criminal justice personnel and victim-related services to provide relevant information as defined above to victims as a routine and integral function of their ongoing operations;
- acceptance of the advantages of communication and co-operation among themselves in respect of this field; and
- acceptance of the need to change internal operations and create mechanisms to achieve the first two elements of this approach.

65. In pursuit of this approach, each

provincial and territorial jurisdiction should develop a co-ordinating role to:

- identify and reduce gaps and duplication in meeting needs;
- develop common responses to similarly perceived needs;
- provide expertise on information design and distribution;
- ensure ongoing support for meeting victim-related information needs.

66. Information on trial date and adjournments should be made available as the case progresses.

67. Information on the disposition of the case should be provided at the conclusion of the case.

68. Prosecutors, on request, should ensure that victims are informed of the outcome of plea bargaining but retain the discretion to not inform as to the reasons for the agreement if in the public interest.

69. Information on property recovery and return should be provided as the victim requests, or in all cases at the conclusion of the case.

70. Information on release from incarceration should be provided to the victims if they have so requested.

71. Information should be provided to victims and witnesses on the criminal justice system, including:

- description of the system, roles of key players, and the criminal justice process;
- obligations and rights of victims and witnesses;
- explanation of a subpoena;
- enforcement of court orders, such as restitution orders and peace bonds.

To accomplish this, police, prosecutors, and victim-related services in each province should jointly produce and distribute a pamphlet on these items. Further, the pamphlet should be distributed with all subpoenae, and include a tear-off page for presentation by the witnesses to their employers, explaining the obligation to allow the witness to attend the trial.

72. In designing and implementing all services/materials for victims, special attention should be given to the following factors:

- the effect of victim traumatization, including: the need to make the information simple yet sufficient; the need for a pro-active approach in delivery; the need to deliver information over a period of time; the need for an empathetic, supportive approach;
- the development of material which is appropriate and accessible.

73. A federal/provincial study group should be formed to explore the establishment of a National Victims Resource Centre and that the study should examine not only the issue of the types of information which such a Centre would collect but how the information should be accessed, what would be the most appropriate method of funding, and where the Centre should be located.

74. The Canadian Centre for Justice Statistics with the support of the federal Departments of Justice and Solicitor General carry out a National Victimization Study every 5 years.

Private Justice

75. The Federal/Provincial Conference of Ministers responsible for Criminal Justice consider the establishment of a working group of officials to enquire into the extent to which victims have established their own system of justice to deal with certain offences and the implications of such "private justice" for the publicly controlled criminal justice system. (See Chapter 1)

Costs and Funding

76. The use of a fine surtax to generate funds for victim services within each province should be explored by Provincial Attorneys General; this would entail a fixed penalty being imposed in addition to the sentence or penalty otherwise imposed by the judge upon conviction for a summary conviction or an indictable offence.

77. All minimum and maximum limits on fines should be upwardly adjusted to reflect to-day's cost of living.

78. The additional revenue collected through the imposition of the two previous recommendations should be earmarked to fund services to victims of crime.

Monitoring the Implementation

79. The progress of all jurisdictions in attempting to implement those recommendations in this Report which are accepted by the Federal Provincial Committee of Ministers should be monitored over a period of two years by a small federal/provincial working group which shall report back to the Committee of Ministers.

APPENDIX 1

FORMS OF SERVICE TO VICTIMS

APPENDIX I - FORMS OF SERVICE TO VICTIMS

I POLICE-BASED VICTIM SERVICES

(a) Specialized Units - The Edmonton Programme

The Edmonton Police Department established a separate Victim Services Unit in 1979. This Unit is located within the Community Services Section and operated with a staff of six from the Department complemented by seventy trained volunteer 'advocates'. The volunteers work under the direction of police officers assigned specifically to the Unit.

Initially, the programme dealt with victims of break-and-enter (residential and business) and was later expanded to include victims of robbery, victims of assault and accident-related injuries.

The services provided range from immediate crisis responses, to providing assistance to victims in applying for restitution or for criminal injuries compensation. Their goals are to try to provide whatever assistance is needed by each victim.

Depending on the case, the services provided may include assisting victims in the prompt return of their property; crisis counselling and emotional support for victims and their families; arranging for emergency property repair; referrals to community agencies; sending a letter to victims to inform them of the status and progress of the case; providing information on criminal justice procedures; providing assistance in court; help in filing for insurance; providing crime prevention information; and if necessary, providing assistance in making funeral arrangements.

One very important facet of the Edmonton programme is the service to assist victims in the prompt return of property. As this was the forerunner of many similar programmes, it is outlined in some detail below.

The Edmonton approach is to release certain forms of property after the articles have been identified, tagged and photographed along with the owner. The owner is then required to sign a release promising to produce these items if they are required by the Court in the future in proceedings relating to the original loss. In addition, the owner must promise not to dispose of the property or alter any of its identifying features until criminal prosecution is completed.

In Edmonton, the cases where this method is predominantly utilized have been found by experience to be:

- Where an accused has an outstanding warrant for his/her arrest and the property is being held indefinitely.
- Where there is a stay of proceedings of a trial.
- Where victims require the property for their livelihood.
- Where there is a guilty plea in court.
- Where property is properly marked and identifiable by a serial number.

There have been some difficulties in bringing authorized personnel together with victims, largely due to the availability of personnel in the Identification section, and to the problem of finding a convenient time for all interested parties. There are other limitations to a scheme of this sort. Items which cannot be readily identified are difficult to release. Certain property cannot be released because of its connection with the commission of crime, or its 'fluid' nature (e.g., money). Items taken as a result of a search warrant, articles which are illegal to possess, items necessary to demonstrate the aggravated nature of a crime, evidence processed by the forensic laboratories, articles for which the victim has received insurance, and property where ownership is disputed also may not be released.

In spite of these limitations there is an abundance of evidence to indicate that such a scheme benefits both victims and the police. For the victims, the benefit is the faster and simpler restoration of and use of their property. For the police, the system results in cost-efficient property management, and in improved relations with victims and ultimately with the community. Perhaps more importantly, these benefits are all obtained without prejudice to the interests of the criminal justice system or the rights of the accused.

As a specialized unit, the VSU is responsible for its own operations and orientations. It has maintained, however, a close liaison with other sectors of activity such as the Department's Crisis Intervention and Child Abuse Team. As individual cases are reported to the VSU on a daily basis from the operations section, the Unit makes sure that a good working link is maintained.

The Calgary Programme

In 1977 the Calgary Police Department undertook some steps to meet the needs of crime victims by appointing two staff members to provide case file information to victims and other interested parties such as insurance companies. Two years later five social workers were hired as 'crisis intervenors' to help police officers deal with emotionally charged situations. In 1981 through the joint efforts of the Federal Solicitor General and the Calgary Police Department three staff members were hired to expand services to crime victims. In April, 1983, the Victims Services Unit and the Crisis Unit were integrated to form the Victim Crisis Unit. The crisis component has a staff of 5 and the victim services component has a staff of 6. The Victim Crisis Unit supported by a corps of volunteers operates under the supervision of an Inspector (Community Services Section).

The Victim Crisis Unit provides extensive services to victims of property and person-related crimes. Particular attention is given to special groups of victims, for example, the elderly. Services include information on case status (sent to victims of property-related offences to inform them of available services), help in filing for insurance or compensation, and information on crime prevention. Victims of person-related offences are called by Unit Workers and offered services.

Clients are primarily referred to the Crisis Unit by police officers who are called to intervene in highly emotional situations, for example, family violence. Workers in this Unit may be dispatched twenty-four hours a day. Police officers contact the Crisis Unit when they think that help on-the-scene is required and will refer the victim to the Victim Crisis Unit.

Training sessions are organized for police officers and volunteers on the needs of crime victims and how to respond to crisis situations. Brochures and pamphlets are published not only for the information of crime victims but also for the education of the general public.

The Kitchener-Waterloo Programme

The Kitchener-Waterloo police-based program commenced its activities in January, 1982. The program is located within the Community Relations section and as such is under the supervision of an inspector, supported by a small civilian staff and a group of twelve trained volunteers. The volunteers staff an information desk in the courthouse.

The nature of the Victim Services Programme was shaped in large part by the findings of a needs assessment study conducted in 1980. The initial target population for the programme included victims of serious crimes such as homicide, attempted homicide, sexual assault, assault causing bodily harm, and robbery. Victim service workers contact such victims by telephone.

For victims of break-and-enter, contact is made by mail unless the investigating officer makes a direct referral. An offer of service is extended to the victims and an invitation to inquire about crime prevention programmes or about information on individual cases.

Services provided include basic information regarding case status, crime prevention, courts, insurance claims, aid in filing for compensation, emotional support, and referral to other agencies.

(b) Integrated Units

This model integrates or blends the victim service unit into an existing section/division of the police force, for example, into an existing Crime Prevention Unit or Community Services Section of their department.

Both the Saint John's Police Department and the Regina Police Department have models of this nature under development. The Regina proposal will serve as an example.

The Regina Proposal

A report produced by a committee of senior personnel within the Regina Police Department in October 1982 recommended the establishment of a Victim Services Unit within the Operational Services Division.

The Unit will be managed by police personnel but operated by civilians and will be physically located in the police department's main building. The main feature of the Unit, however, is that officers already connected with crime prevention activities will also be responsible for victim services, thus allowing officers to make use of their knowledge in crime prevention to benefit crime victims directly. It should be noted that one of the significant findings of the needs assessment studies is the close link between prevention and victim services.

The objectives of the Victim Services Unit would be to help the victim cope with the effects of crime; provide information; support and assist witnesses; and provide comprehensive assistance to victims 65 years and older.

Victims of crime of violence and residential break-and-enter would be the primary target group.

Although the goal of these programmes is to meet the needs of victims and to minimize inconveniences associated with their involvement in the criminal justice process, the programmes of specialized units usually are designed to produce spin-off benefits to the criminal justice system itself. The secondary objectives can include improving police/comnmunity relations, increasing citizen involvement, preventing further victimization, increasing public awareness and use of community services, and increasing willingness to report crime and co-operate with the investigation and prosecution process. The units also may directly benefit other police officers by saving officers' time at the scene, by handling stressful duties such as death notificaitons, and by forwarding information from victims back to investigators which may contribute to improving clearance rates.

(c) An Holistic Approach

Rather than create separate victim assistance units with separate staff and resources, it is also possible for police departments to attempt to improve victim and witness services as part of the normal operating procedures of the entire department. While this is likely to be less costly it is also advantageous in that the responsibility for helping victims and witnesses is accepted as part of the normal duties of all members of the police departments, not that of a group of officers designated to do so. The issues are somewhat similar to those in crime prevention which either can be assigned to a special crime prevention unit with a few officers, or can be made part of the practices of all members. Re-orienting an entire police department from a law enforcement to a crime prevention philosophy can require major changes in our fundamental assumptions of policing and in standard operating procedures. The same can occur with respect to making victim and witness assistance part of the basic policies of a police force. With this in mind a proposed study to be conducted in Vancouver will examine how the Police department can best respond to the victim's needs by a re-organization of existing resources.

RCM Police

The C.C.S.D. (1983) study revealed that the majority of detachments provide services to victims of crime. The detachments also, however, stressed the importance of their witness-based responsibilities. Few detachments indicated direct involvement in the provision of special victim-based projects or programs. Many indicated the importance of recognizing that victim services are an inherent element of a police officer's overall responsibilities.

The services of greatest direct interest to the force are those linking the victim with the legal system specifically, victim/witness protection, providing information on the status of the investigation, and notification of case dispositions. While service patterns vary considerably amongst detachments, most provide services for witnesses - primarily relating to fees, preparing witnesses for testimony, transportation to court, information on the legal system and accommodation.

The services provided to meet the needs of victims include crisis intervention, escort and/or referral to social agencies, shelter/food and medical care. These personal care services appear to be more prevalent in rural areas of the country. Many detachments indicated that social and health services should be directly provided by agencies with primary responsibilities in these areas.

Few detachments reported a desire/plan to develop victim services. Few are engaged in community-based planning exercises. Few are involved in formal inter-agency mechanisms. Few have undertaken evaluations specifically related to victim services.

A minority of respondents indicated that they employed volunteers in providing victim services. Training provided to staff and volunteers is generally linked to the ongoing police training programmes. However, there is evidence of increased interest in training related to family violence matters and personal care services such as crisis intervention.

II VICTIM/WITNESS MANAGEMENT PROGRAMMES

Several projects have been initiated in various parts of the country which may be described as 'Victim/Witness Management Programmes'. For example, studies have been undertaken in Yellowknife (N.W.T.) and in Whitehorse (Yukon) to assess current case management practices and their impact on victims and witnesses.

Alberta - Witness Central Unit

A central witness management system was established in Edmonton and Calgary in 1980 by the Alberta Attorney General's Department. The Witness Central Unit coordinates court scheduling and procedures for notifying civilian and police witnesses, provides a twenty-four-hour telephone service for answering requests for information, and makes special arrangements if necessary for interpreters, and for emergency transportation and accommodation for witnesses. The Unit also sends out information on court procedures.

Winnipeg - Victim/Witness Assistance Programme

A further example is the Winnipeg Victim/Witness Assistance Programme which operates in the Provincial Court. This programme which began in 1981 involves full-time staff and volunteers who work through an advisory board made up of representatives from the police, Crown Counsel, the judiciary, probation, and community agencies. A wide variety of services are provided by the programme, including an information brochure which is sent out with subpoenas describing court procedures, witness fees, restitution, and other available services for victims and witnesses. We understand the programme also is developing special witness alert and court cancellation procedures to avoid unnecessary witness appearances.

III PRIVATE/SOCIAL SERVICES NETWORK PROGRAMMES

Salvation Army Victims Assistance Programme, Ottawa

A victim's 'at the time of crime' programme has been operating in Ottawa under the direction of the Ottawa Police Department and the Salvation Army for two years and utilizes a corps of over forty volunteers who are supervised and trained by staff of the Salvation Army and the police.

When a criminal offence has been reported and the police have completed their investigation, the officer in charge will, if he sees the need for these services, inform the victim that such service is available. If the victim indicates a desire for help, the officer will contact the project's answering service or provide the victim with either a handout explaining the nature of the service, or a printed business card which will contain in capsule form the nature of the service given and how to make contact with it. Upon being notified by either the police or the victim, the answering service will dispatch a team to interview the victim and assess the services required.

Assistance is available to victims on a twenty-four-hour basis and includes:

Crisis counselling and analysis of problems.

Emergency-type services such as securing the victim's home, cleaning up damage, helping with immediate or pressing needs, such as babysitting, contacting relatives, friends, etc.

Assistance in applying for victim compensation and filing insurance claims.

Referrals to other agencies and resources including temporary housing and other counselling and social agencies such as Family Services, Children's Aid Societies, Social Service Departments, etc.

Contacting the victim's creditors, employers and other persons involved in or affected by the results of the offence, in order to promote acceptance and understanding of such matters as delayed payments, time lost from work or other disruption in normal function.

It should be noted that the Ottawa Police Department have amended their reporting forms to include a question on notifying the victim of the service available.

Integrated Victim Assistance Programme - Montreal - Hochelaga-Maisonneuve

This project is designed to provide direct and indirect services to crime victims in the Hochelaga-Maisonneuve district of the city during one year; analyze the needs of these victims and determine how best they can be met; and promote the take-over of such services by local organizations already existing in the community.

The project is directed from the University of Montreal and the services are given by criminology students as part of their field placement, and by a number of volunteers including professionals who have offered time to participate in the project.

While all residents of the district are entitled to services, priority is given to victims (and their immediate family) of murder or attempted murder, assault, sexual assault, robbery, arson or kidnapping.

The direct services offered include information on the case, emergency intervention, aid in filing for insurance and/or compensation, counselling, and creation of self-help groups.

A close liaison has been established with the Police Department. An officer daily informs the coordinator of all cases involving victims of the previous day. The victims are then contacted by letter, phone, or personal visit, depending on the cases, and then informed of the programme and offered services. Police officers are encouraged to inform witnesses of the programme and to make referrals directly where appropriate. The public is informed of the services by the media in an effort to encourage self referrals.

Victim Offender Reconciliation Project - Kitchener, Ontario

The Victim/Offender Reconciliation Programme (VORP) concept originated in Kitchener, 1974, as a joint initiative of the Probation and Parole Department's volunteer programme and the Mennonite Central Committee. Since 1980 the Project has been under the auspices of the Mennonite Central Committee which provides services on a contract basis for probation and the courts.

VORP was sparked by an incident in Elmira when two young men caused a total of $2 200 damage to twenty-two victims in a night of drunken vandalism. Windows were broken, tires slashed and cars damaged. Both pleaded guilty to all twenty-two charges.

Normally in such a situation restitution might have been ordered by the court but payment would have been made through the court office. The offenders would not have had to face the victim and the payment would have seemed more like a fine than repayment for a loss. However, with the judge's agreement and the help of a third-party facilitator, the two young men met with each victim. After six months, they had completed restitution. Success with this case encouraged continued development of the concept.

The Victim Offender Reconciliation Project attempts to resolve the conflict between the offender and the victim of a criminal offence through the process of reconciliation. The immediate task is to correct the harm done in a manner satisfactory to both the victim and the offender and facilitate the reaching of an agreement regarding restitution. The function of the third-party mediator is to assist the victim and offender in communicating and problem-solving.

The assistance of a more objective third party is useful to facilitate interaction between the victim and the offender. Volunteers from the community trained in victim-offender confrontations, and VORP staff are involved as third-party helpers.

VORP focuses on victims and offenders in such crimes as break-and-enter, theft, mischief, wilful damage and assault where the victims are identifiable, such as private individuals, or small businesses. At present the mutual agreement process takes place before sentence, or as part of a probation order.

As of January 31, 1983, there were twenty-one such programmes operating in Ontario with contractual Community Service order and restitution programmes.

In a separate development, VORP was introduced as a restitution programmes in the Ottawa-Carleton Detention Centre and later extended to Mimico Correctional Centre, where inmates make voluntary restitution as a condition of temporary absences for employment. Wherever possible these restitution candidates are expected to engage in face-to-face meetings with their victims in order to establish an agreed amount of restitution.

As a result of VORP settlements victims receive restitution in the form of labour or cash, having had an opportunity to set an amount and payment schedule. In some cases it may be the only channel for restitution available to a victim of low or moderate income, who may not have the resources or time to file suit, or for one who does not have insurance.

In situations in which the offence is part of an ongoing inter-personal conflict and victim and offender are likely to come in contact again in the future, a conflict resolution process provides direct assistance in living peaceably within a community.

Offenders rarely have to face the real human costs of their actions; a confrontation with the person they have victimized often provides a better understanding of the meaning and implication of their offence to the victim as well as a better understanding of the victim's situation.

The Restigouche Family Crisis Intervenors Programme, New Brunswick

In 1978 in Restigouche a steering committee composed of individuals from the justice, health and social service sectors met to discuss responses to family crisis. As a consequence of the Intervenors Programme was initiated in May 1980.

The programme is directly accountable to a citizens' committee and provides each of the five police detachments with a team of trained intervenors twenty-four hours a day, seven days a week.

"The 'typical intervention' involving a volunteer begins after police have restored order in the home. If the police feel that mediation with an intervenor might be beneficial and the parties concerned agree, an intervenor is called. Usually, a team of four intervenors takes turns being on call. The intervenor carries with him or her (80 per cent of the volunteers are women) a directory of social services so if the person needs or wants an introduction to the sometimes frightening world of social service, he can get a guiding hand from the volunteer." (Solicitor General, Liaison 1981)

The purpose of the programme is to reduce or contain physical violence in the family and to provide a refuge to emotionally or physically abused women or children by providing back-up services to the police. The project is intended to encourage an interdisciplinary approach of justice, health and social service professionals in the response to family crisis.

IV SERVICES FOR VICTIMS OF SEXUAL ASSAULT

In 1978 a Consultation on Rape was co-ordinated by the Ontario Justice Secretariat to identify strategies to improve the ability of the Justice Policy Field to respond to the problems of victims of sexual assault. This Consultation led to a major new initiative in the development and distribution of a standardized sexual assault evidence kit in co-operation with the Ministry of Health. Special assistance on the design of the kit was provided by representatives of the Ontario Medical Association's Centre of Forensic Sciences, the Niagara Region Sexual Assault Centre and the Ontario Provincial Police.

The standardized kit has two major objectives. It is designed to improve the investigation and prosecution of sexual assault cases by ensuring that all the rules governing the collection of forensic evidence and its admissibility in court have been carefully adhered to. This will prevent successful challenges to the Crown's case on technical grounds regarding the collection of the evidence. Use of the kit facilitates the cooperation of medical and hospital personnel by providing them with detailed information on the forensic procedures with which they have been unfamiliar in the past. The standardized kit is also designed to focus the hospital's attention on the special medical and emotional needs of persons who have been sexually assaulted.

This evidence kit standardizes medical and forensic procedures to be followed in the treatment of sexual assault victims in Ontario. It provides hospital staff with detailed instructions and all the materials necessary for collecting clothing, debris, body specimens, etc., which may have potential use as forensic evidence. Should the victim wish to report the offence to the police, the materials are collected by a doctor or nurse and are handed over to a police officer for delivery to the Centre of Forensic Sciences. The procedural guidelines in the kit also contain a special section on treatment and follow-up procedures for patients reporting sexual assault.

To promote the use and understanding of the standardized evidence kit, the Justice Secretariat commissioned a videotape to accompany its introduction into Ontario hospitals. The videotape, entitled, Helping the Victims of Sexual Assault, is designed primarily as a teaching aid for physicians and nurses to familiarize them with the forensic procedures and the legal requirements surrounding the investigation and prosecution of sexual assault cases.

Regional meetings hosted by local hospitals and arranged in consultation with the Centre of Forensic Sciences and the local offices of the Crown Attorney, have been held across the province to show the videotape and to respond to concerns and questions about the use of the evidence kit.

An evidence kit is kept in the Emergency Department of all hospitals on a twenty-four-hour basis. It is used when a person who comes to the hospital, complaining of sexual assault, wishes to report the offence to the police. The investigating officer is responsible for providing the hospital with a replacement kit. All police forces in the province receive a stock of kits from the Centre of Forensic Sciences.

The Saskatoon Sexual Assault Centre

The Saskatoon Sexual Assault Centre was established in late 1975 to provide a wide range of services to victims of sexual assault. Last year 116 cases were handled by the Centre. The Centre is run by 2 1/2 full-time paid staff with the assistance of 35 volunteers. The Centre operates a crisis line and will dispatch a worker to a victim's home to provide emotional support and advice regarding services available and information on the criminal justice process. A worker will accompany the victim to the hospital and will act as a liaison with the police. The worker will also liaise with the Crown Counsel and attend court with the victim if necessary. Victims are also referred to legal aid. The Centre will advise victims of the availability of Criminal Injuries Compensation and a worker will accompany the victim to the hearing and make representations to the tribunal if requested.

The Centre is also involved in the provision of public legal education. Workers routinely lecture on psychological support for victims to police recruits at the R.C.M.P. Academy. In addition, the Centre has authored brochures and booklets on sexual assault, the prevention of sexual assault, sexual assault of children and what to do if you are sexually assaulted.

The Centre receives funds from the Saskatchewan Department of Social Services, the United Way, the City of Saskatoon, and the Saskatchewan Law Foundation in addition to private donations.

V TRANSITION HOUSES AND SHELTERS FOR BATTERED WOMEN

Transition houses provide temporary accommodation and support for battered women and their children for periods of a few days to a few weeks and in some cases a few months. They provide a supportive environment where women can consider and discuss their alternatives with other women in similar circumstances. A recent study conducted by the National Clearing House on Family Violence indicates that there are now 165 such houses in Canada.

An example of such service is provided by the Women In Need Society (W.I.N.S.) Transition House which is located in Trail, British Columbia, a town with a population of under 10 000. The transition house operates 7 days per week, 24 hours per day and is staffed by 3 full-time employees and 20 volunteers who spend a total of 160 hours per month at the transition house.

W.I.N.S. can accommodate 6 women and 10 children at any one time. The services provided by the home include one-to-one counselling, peer counselling, assertiveness training, legal advocacy and advice regarding welfare policy. The home also provides food and clothing, assistance in finding new accommodation and a 24-hour crisis line.

Safe Homes

A network of 'safe homes' has begun to develop across Canada, particularly in rural and isolated areas of Manitoba, Northern Ontario and parts of British Columbia. A 'safe home' is a private residence whose owner offers accommodation to anyone in need. Safe home programmes are generally co-ordinated by community agencies or transition houses in nearby urban centres. The agency will 'billet' a person in need of emergency accommodation in a safe home. Safe homes differ from transition homes in that they generally are available to anyone in need of emergency accommodation but no other services (counselling, legal advocacy, etc.) are available.

APPENDIX 11

EXAMPLES OF PROGRAMME COSTS

APPENDIX II EXAMPLES OF PROGRAMME COSTS

Police Victim Unit Models

Model A

Province: This model occurs in various police forces across Canada on an informal basis.

Location: No specific location. Model could be in rural or urban area.

Staff: Volunteers are not used.

Services: The police officer refers victims to social services in the community, notifies victims of the status of their case, helps the victim get property returned and advises the victim on crime prevention measures.

Cost: No additional cost.

Model B

Province: Ontario

Location: Urban city, population approximately 300 000.

Staff: This model of victim service calls for 1 police sergeant on a full-time basis, a full-time civilian coordinator and a full-time clerical person.

Volunteers: The programme accepts referrals from the city's police force. Staff and volunteers are to provide crisis intervention services and follow-up assistance. The full-time police sergeant sensitized police officers to the role of the victim unit, helps victims get property returned, notifies victims of the status of their case, etc.

Cost: $130 000 per year.

Model C

Province: Alberta

court. Babysitting is provided if it is an emergency.

Cost: $25 000 per year.

Model B

Province: Alberta

Location: Urban city, population approximately 532 000.

Staff: The witness unit has four full-time paid staff.

Volunteers: The unit does not use volunteers.

Services: A variety of basic services to witnesses have been developed by the witness unit. These services include: subpoena preparation and distribution services, notifying witnesses of any court cancellations, monitoring of subpoena service, answering witness enquiries, referral to social services, emergency transportation to court and letters of appreciation to witnesses who have appeared in court.

Cost: Exact programme cost cannot be ascertained. The unit is not a separate project but is part of the overall court operation of the Attorney General.

Community-Based Victim Programmes

Model A

Province: British Columbia

Location: City, metropolitan population approximately 1 268 000.

Staff: No new staff people were hired. One regular staff person spends 15% of his time co-ordinating the programme.

Volunteers: Approximately 15 screened and trained volunteers provide direct services to victims. One senior volunteer is responsible for the programme's ongoing operation. The

Location: Urban city, population approximately 592 000.

Staff: The programme has the following full-time paid staff: 1 police sergeant, 1 civilian co-ordinator, 1 researcher, 2 clerical persons and 1 secretary/typist.

Volunteers: The programme has four students doing a practical field placement and 3 part-time volunteers.

Services: The programme provides services 12 hours a day, from 8:00 a.m. to 8:00 p.m. The staff do not provide crisis services since the police force has a separate crisis team. The following follow-up services are provided: emotional support, information on charges, information on criminal injuries compensation, referral to social services, help in the return of recovered property.

Cost: approximately $200 000 per year.

Court Victim/Witness Services

Model A

Province: Ontario

Location: Urban city, population approximately 250 000.

Staff: One full-time paid person co-ordinates the programme. A secretary from the sponsoring agency takes on part-time secretarial responsibilities for the programme.

Volunteers: The programme has 5 regular volunteers who assist in providing witness services.

Services: An information booth is located in the courthouse. Information is provided on court locations, and court personnel. Staff and volunteers also provide information on the court procedures and provide company for the victim/witness in senior volunteer assigns cases, monitors cases, keeps up the statistics and provides services to victims.

Services: A victim may call the community office between 9:00 a.m. and 4:00 p.m. on weekdays. Volunteers will respond to victim's needs providing emotional support, referral to social services and direct advocacy for the victim, with community and criminal justice agencies.

Cost: Yearly cost $3 306. The low cost is due to the program's attachment to an existing community agency with office space and personnel.

Model B

Province: Ontario

Location: Urban city, metropolitan population of approximately 2 137 000.

Staff: One civilian full-time co-ordinator is hired to oversee the victim services. A secretary is also hired for one day per week.

Volunteers: The programme has 40 trained volunteers to be on call 24 hours a day to provide victim services.

Services: The programme accepts referral from two police detachments in the city. The civilian coordinator and the volunteers provide crisis intervention services, such as companionship, emergency transportation, referral to social services and follow-up services with the victim, i.e.; help in filing a criminal injuries compensation application and notification of the status of the victim's life.

Cost: $27 000. per year.

Police and Court Based Victim/Witness Programmes

Model A

Province: Manitoba

Location: Urban city, population approximately 564 000.

Staff: The programme has the following full-time staff: a 1st class police constable, 1 civilian co-ordinator, and 1 witness services worker.

Volunteers: The police-based victim services component of the programme is currently investigating the possibility of using volunteers. The court-based witness component has approximately ten volunteers to provide services.

Services: The police constable within the police station provides information on the status of a case, information on criminal injuries compensation, emotional support, referral to social services and assistance in the return of recovered stolen property. The witness or court services component operates a reception centre for witnesses, attaches a brochure of the programme onto all subpoenae, notifies witnesses of trial cancellations, operates a witness alert system for doctors in the downtown area.

Cost: $100 000 per year.

Model B

Province: Ontario

Location: Urban city, population approximately 190 000.

Staff: The victim/witness programme has 1 community staff person, and 1 civilian co-ordinator and 2 victim services workers working out of the community relations branch of the local police force.

Volunteers: Volunteers are used to staff a witness information booth at the local courthouse.

Services: The victim/witness programme provides services to both victims and witnesses. The 3 staff in the police station work from 8:30 - 6:30 p.m. contacting victims by form letter or telephone informing them of their service, offering emotional assistance, information on their case, information of the criminal justice system, and information and referral to social services in the community. A witness information booth in the courthouse provides information on court location, court personnel and the criminal justice process. The community worker oversees the development of the victim/witness project, plans for new and improved services and maintains contact with community services. The community component has developed various self-help groups for victims of sexual assault and sexually molested children. Plans are on the way to develop self-help groups for battered women and the batterer.

Cost:

Community Component	-	$39 000. per year
Police Component	-	$66 000 per year

Total Annual
Operating Cost: $105 000 per year.

Police/Court Case Management System

Province: British Columbia

Location: Being implemented throughout the province of British Columbia.

Description of Process: In the summer of 1980, the Attorney General of the Province of British Columbia established a task force to evaluate the case management procedures within the justice system components. This task force recommended the streamlining of various case management procedures to increase efficiency for all sectors and to inevitably reduce costs. Many of these recommendations have already been implemented while other changes are in the process of implementation. The following is a list of some of the Task Force's recommendations. These recommendations have been supported by the executive of the Ministry.

(A) Charging Standards

(1) The development of evidentiary checklists to ensure that peace officers provide all the necessary evidentiary information for each case.

(2) The development of a catalogue containing standard charge wordings for all Criminal Code offences and most Provincial Act offences. The catalogue wordings can then be put onto word processor discs for the automatic preparation of documents.

(B) Report of Crown Counsel

(1) The development of a report that investigating offices can easily compile, containing in conjunction with the evidentiary checklists, all necessary information about the alleged offence, the accused, etc., to ensure that quality cases enter the system. The report should contain all necessary information to satisfy both police and crown file systems.

(C) Quality Control

(1) All evidentiary checklists and reports to crown should be screened to ensure completeness of information. These reports should be screened by the watch platoon commander and a Police/Crown liaison. The approved Crown Counsel should also screen the reports to ensure that the proper charge(s) is laid based on sufficient information.

(D)
Witness Control

(1) The shift's commanding officer and the Police/Crown Liaison should screen the evidence in the reports to screen out any unnecessary police witnesses. Also, the reports should contain police shift schedules reflecting the days police witnesses are on the day shift and the preferred dates for court appearance.

(2) The approving Crown Counsel should ensure that the civilian witness evidence in the report is necessary to the prosecution. If not, the witness should be eliminated from the report. The elimination of civilian witnesses should be left for the trial prosecutor to decide following a not guilty plea.

(E)
Police/Crown Liaison Officer

(1) A police/crown liaison officer should be established within each police department/detachment on a full or part-time basis. This staff member can impact the quality of cases entering the system and subsequently reduce the costs of case management.

(F)
Document Preparation Processing

(1) The use of automation or semi-automation of document preparation can reduce preparation costs through elimination of duplication, as well as ensure standardization of wording. Word processing equipment could be used in the larger centres and pre-printed forms in the smaller centres.

(2) Information should not be prepared until the approving Crown Counsel has approved the charge(s).

(3) A four-part Information was developed with a partially completed fourth copy recording only the accused's name and two

counts. This copy should be used as a master page for producing the subpoena, summons, warrant and police notification copies through a photocopying process.

(4) The majority of Informations should be sworn by the Police/Crown officer.

(G) Pre-Printed Jacket

(1) A police-initiated file folder containing sections for the recording of case summary information on the form provides ready reference to the prosecutor and highlights the current status of the case.

(H) Police-Witness Notification Denotification

(1) The police notification form should be photocopied from the designed multi-form Information form.

(2) The notification form should be given to the Police/Crown Liaison officer in duplicate to be delivered to the platoon commander/shift NCO for delivery to peace officers. The officer should then return the signed copy of the form as proof of notice.

(3) Police witnesses should be responsible to confirm with the Police/Crown Liaison officer 2 days prior to trial to ascertain if the trial is proceeding. Failure to do so (when the trial does not proceed) would negate any overtime payment.

(4) The Police/Crown Liaison officer should be responsible for denotifying police witnesses.

(I) Civilian Witness Notification

(1) Civilian witnesses should be notified by telephone and/or mailed notification for all but approximately 10% of witnesses.

Denotification

(2) A witness service centre should be established in larger metropolitan areas to administer witness notification and denotification. The centre should operate under the direct control of the Crown Counsel and in additional to the above be responsible for:

(a) document preparation, i.e., information, subpoenae, warrants, summons and police notification

(b) inform witnesses about all aspects of their appearances

(c) be responsible for witness travel and accommodation arrangements through a central reservation system

The centres could be responsible for all of the above for an entire region as well as an individual city.

(3) In small centres, a single witness notifier could be responsible for the above.

(J) Central Reservation Systems

(1) A one-call reservation system is available through Pacific Western airlines to arrange for travel and accommodations for witnesses, prisoners/escorts, crown corporation personnel, etc. All arrangements will be made, notifications are also given to the travelling client. The invoice will be submitted on a regional basis or bi-weekly schedule.

(K) Filing Systems

(1) Crown Counsel should maintain a centralized filing system.

(L)
Trial Scheduling (1) Easily operated automated systems should be implemented to assist the judiciary to schedule trials so as to process the greatest number of cases in a timely manner with minimum inconvenience to all participants.

Note: It is difficult to ascertain the costs of the above case management system. Some monies initially may be spent on the following: designing of forms, printing of forms, purchasing of automated equipment, possible creation of new positions, and staff training. These initial costs, though, appear to be offset by certain cost savings such as the following: time saved in screening police reports, time saved by the prosecutor in preparing a case; reduced time in preparing informations due to automated equipment, elimination of paid personnel to deliver subpoenae personally to clients; and reduction in police overtime costs from reducing unnecessary police witnesses.

Family Crisis Intervention Units

Model A

Province: New Brunswick

Location: A rural county, population approximately 41 000.

Staff: The programme has one full-time civilian co-ordinator in addition to a secretary employed one day per week. The intervenors are also paid $4 per hour when responding to a call from the police.

Volunteers: Approximately 12-15 volunteer intervenors respond on a 24-hour-a-day basis to calls from the 5 police detachments in this county. The volunteer intervenors are divided into teams of 4 according to specific geographical locations.

Services: The volunteer intervenors respond to calls of family crisis and provide mediation service and referral to social services. A number of homes in the county have been identified which will provide emergency accommodation for victims up to a three-day stay. Follow-up assistance is also provided to ensure that the victims have received the help required.

Cost: The yearly operating cost is $51 800.

Model B

Province: British Columbia

Location: City, metropolitan population of 1 268 000.

Staff: Two police constables and two social workers rotate on shifts to provide victim services 7 days per week from 6:45 p.m. to 3:30 a.m.

Volunteers: Volunteers are not used in this programme.

Services: One plain clothes city constable and one emergency services social worker work as a team in an unmarked police car responding to calls of domestic/neighbourhood disputes. A regular police officer responds first to the call, assesses the situation and then decides whether or not to summon the mobile car unit. The special team then responds to the call, calms down the situation, provides information about community services and offers further assistance. All cases then are followed up by the emergency social services department and appropriate referrals are made for counselling, emergency accommodation, etc.

Costs The costs of this programme are incorporated into the ongoing budgets of both the city police department and the provincial government department. New staff were not hired, but rather reassigned to the special unit. Therefore, a yearly budget could not be obtained.

Model C

Province: Ontario

Location: Urban city, population approximately 250 000.

Staff: The programme does not have any volunteers.

Services: The staff respond to family violence incidents referred to them by the city police force. The programme operates 7 days a week, approximately 20 hours per day, as a back-up service to the police. The family crisis intervenor may provide companionship, referral to social services, arrangement for accommodation, counselling, etc.

Cost: $197 470 per year.

Model D

Province: Ontario

Location: Urban city, metropolitan population of approximately 2 137 000.

Staff: The programme has the following paid staff: 3 full-time social workers, 3 part-time community relations officers, 2 part-time supervisors and 1 part-time secretary.

Volunteers: This programme does not use volunteers.

Services: A social worker and police officer work 7 days a week from 7:00 a.m. to 3:00 p.m. responding to domestic calls referred to them by a regular police officer. If the individuals concerned request assistance, the team goes to the scene, tries to settle the crisis, and assesses the situation for further follow-up assistance. If additional assistance is desired and needed, the case is referred to social workers, who work

5 days a week from 9:00 a.m. to 5:00 p.m., to arrange for such assistance as referral to counselling agencies, etc. The programme works with 2 detachments of the city's police force.

Cost: Yearly operating cost for this programme is $204 053.

Programmes for Battered Women

Transition Homes

Model A

Province: British Columbia

Location: Town population 9 600.

Staff: The transition house has 3 full-time paid staff.

Volunteers: Approximately 20 volunteers spend a total of 160 hours per month at the transition house. This strong volunteer component is needed due to the availability of only 3 paid staff.

Services: The transition house operates 7 days per week, 24 hours per day. The house has accommodation for up to 6 women and 10 children at any one time. Services at the home include: job counselling, couple counselling, one-to-one counselling, a 24 hour crisis line, the provision of food and clothing and assistance in finding new housing.

Cost: The total budget for one year is $136 625.

Model B

Province: Saskatchewan

Location: City, population 162 600.

Staff: The transition house has 9 full-time staff and 2 part-time staff.

Volunteers: The house does not have any volunteers.

Services: The transition house operates 7 days per week, 24 hours per day. The home can accommodate 6 women and 12 children at any one time. In addition to one-to-one counselling and couple counselling, the home provides: food and clothing, arrangements for new housing, children services/child care, transportation, community education and advocacy on legal and welfare policy.

Cost: The total budget for one year is $309 356.

Complainant Support Programme for Assaulted Women

Province: Ontario

Location: City, population approximately 250 000.

Staff: The programme has one full-time professional complainant consultant and one full-time secretary/receptionist.

Volunteers: The programme does not use volunteers.

Services: The complainant consultant provides on-going counselling and consultation to assaulted women who must deal with the criminal justice system. The staff person provides information on the criminal justice system and the legal options available to assaulted women. Appropriate referrals to social services are made as well as the complainant consultant's attendance in court when felt needed.

Cost: Yearly operating cost is $43 506.

Programmes for Men Who Batter

Province: Ontario

Location: City, population approximately 250 000.

Staff: Two probation officers, in addition to their regular duties, organize and run the programme. Secretarial work is done by the regular government staff.

Volunteers: Volunteers are not used at this time. Due to the growing numbers of clients, plans for the future may include training volunteers to act as group facilitators.

Services: The programme offers a 10-week group therapy session for men who batter. The majority of men come to the programme voluntarily while others attend as a condition of probation. One night a week for about 2 hours, the men meet to talk about their feelings and to learn alternative ways to deal with violence. The men also exchange telephone numbers to provide a 24 hour life-line support network.

Cost: The cost of this programme is incorporated into the overall operating cost of the government office. No new staff persons were hired to develop and run the programme.

Victim-Offender Reconciliation Projects/Mediation Programmes

Model A

Province: Manitoba

Location: Urban city, population approximately 564 000. Office is located in the community.

Staff: The programme operates with 2 part-time positions and a part-time clerical assistant.

Volunteers: Two social work students are doing field placements with the programme. In addition a student from a college is working one day per week.

Services: The majority of cases referred to the Victim Offender Reconciliation Project come from the police or magistrate's office before a formal charge is laid. The staff and students try to mediate and reconcile the difference between the victim and offender so that formal charges are not pursued.

Cost: Yearly operating cost $25 000.

Model B

Province: Ontario

Location: Urban city, population approximately 190 000. Programme operates from a community office.

Staff: This programme has 1 full-time co-ordinator and a part-time secretary.

Volunteers: The programme uses trained volunteers to arrange victim and offender meetings and oversee negotiations.

Services: This Victim-Offender Reconciliation Project usually accepts clients on a condition of probation. The victim and offender meet with a trained mediator to reconcile their differences and determine the form and method of reparation. The agreement is then monitored by the project staff. If no agreement is reached, the case is referred back to the courts.

Cost: Yearly operating budget is $43 000

Model C

Province: Ontario

Location: Urban city, population approximately 190 000.

Staff: The programme operates with 2 staff persons. The co-ordinator works 4 days per week on the programme and the case worker works 5 days per week.

Volunteers: Trained volunteers are used to provide the mediation service.

Service: Referrals to the mediation programme come from the community, ie, social agencies, clergy, complainants themselves and the police prior to a trial. The majority of referrals would involve by-law infractions, interpersonal disputes and some minor assaults. A staff person or trained volunteer arranges a meeting with the two parties to mediate or reconcile their differences. An agreement is then reached and the two parties sign a written contract.

Cost: Yearly operating cost is $56 000.

Model D

Province: Saskatchewan

Location(s): This programme operates in two locations in the province. One programme with adult offenders is located in a city with a population of 164 000. The other programme with adult and juvenile offenders is located in a city with a population of 35 000.

Staff: The combined paid staff for both offices include: 3 full-time mediation counsellors, and 2 part-time clerical assistants.

Volunteers: The programmes have in total 8 active volunteers who help carry out the mediation service.

Services: The mediation programme accepts referrals from prosecutors after a criminal charge is laid and prior to a plea. The two parties voluntarily meet to talk about the incident and to explore ways of solving their problem. If an agreement is reached, it is monitored by the programme staff. If an agreement is not reached, the case is referred back to the courts for normal processing.

Cost: Yearly operating cost is $94 000.